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THE GOVERNMENT
OF
GREAT BRITAIN
ITS COLONIES AND DEPENDENCIES

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PREFACE TO THE FIFTH EDITION.

THE aim of this manual entitled *The Government of Great Britain* is to present a clear and concise description of the various organs of government, central and local, and their functions, and to analyse the principles and conventions underlying the theory and practice of our constitution. Throughout the book considerable attention is paid to historical development: institutions and political practices are described, not as isolated phenomena, but as stages in a continuous evolution often determined by the needs of the moment.

Recent legislation of political and constitutional importance has been fully dealt with, *e.g.* the Education Act of 1919, the Representation of the People Act of 1918, the Government of India Act of 1919.

Administrative changes at the centre are described in detail, particularly changes necessitated by the recent War. The working of our local government system, including poor law and education, is treated also at some length, in view of the growing recognition of the importance of local government.

In this, the fifth edition, the original text has been retained so far as possible, though certain sections have been entirely rewritten in the light of recent developments, and many smaller alterations and additions have been made.

A special feature of the present edition is the prominence given to imperial affairs. Thus attention has been paid to the evolution of the constitutional position of the Dominions and India, colonial institutions are described in some detail, the relations of the Dominions to the mother country are so far as possible defined, and an account is given of the growth of imperial co-operation in its various spheres, including foreign policy.

PREFACE TO THE SIXTH EDITION.

In this issue such changes have been made as the events of the last two years have rendered necessary, and an Appendix has been added on the constitution of the Irish Free State.

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PART I.

INTRODUCTORY.

CHAPTER I.

THE BRITISH CONSTITUTION.

§ 1. **The Nature of a State.**—An independent civilised state at the present day must possess certain marks or characteristics. Thus it must be permanently established and organised for the purposes of government. It must be in possession of a definite area of territory, and it must have attained a certain standard of civilisation. It must also be free from all external control. The kingdom of Great Britain satisfies these conditions and therefore forms a state. It contains within itself historically separate nations, and its organisation is complicated by the fact that various self-governing Dominions and colonial Dependencies are connected with it. Whatever the technical theory, the relations between these colonies and the parent state vary considerably, and, as will be seen later, are very peculiar and cannot be precisely defined.

§ 2. **The Functions of a State.**—Every modern state has a complex organisation for the purposes of government. In this organisation it is possible to distinguish three separate functions of the state. These are the legislative, the executive, and the judicial functions.

Every state has to secure the maintenance of order in the area which it controls. For this purpose it lays down rules which must be observed by its inhabitants. These rules determine what may and may not be done by the latter and regulate the methods in which certain transactions between them are to be conducted. They also impose, in some cases, positive duties which must be performed by those on whom they fall under pain of punishment. These rules which a state lays down for the guidance of its subjects are called laws. The process by which they are formulated is termed legislation, and the persons who determine of what they shall consist are collectively called the "Legislature."

Legislation, however, is not the sole function of a state. After rules have been laid down for its subjects to follow, the state must see that they are obeyed and that any questions which arise concerning their meaning are determined. It must, therefore, appoint persons to decide these questions. Such persons are called judges or, collectively, the "Judiciary," and the function they exercise is called the judicial function.

Again, it is necessary that there shall be some person or persons in a state who shall appoint these judges, shall carry on its dealings with other states, and generally shall organise its affairs. Such a person or body of persons is termed the "Executive."

§ 3. **The Government of a State.**—It is possible for all these various functions to reside in one person or body of persons, but as a general rule they are more or less separated. It is obvious that they are intimately connected with each other and that the smooth working of the government of the state will depend on the proper adjustment of the relations of the various bodies which exercise them. The manner in which this adjustment is

made differs in various states. In an autocratic state, *i.e.* one in which the arbitrary will of the monarch is the determining factor in government, little adjustment is or should be necessary. But in a democratic state, *i.e.* one in which the inhabitants as a whole decide through their representatives the manner in which they shall be governed, the adjustment frequently becomes a matter of the utmost nicety. The rules which determine the formation, powers and mutual relations of the various bodies which exercise the functions of government are known collectively as the "Constitution" of the state.

§ 4. **Forms of Constitutions.**—A constitution may be the result of a continuous growth, as in the case of that of Great Britain, or it may have been adopted as a whole at one particular time, as in the case of Belgium and the United States. In the former case it must be gathered from various sources—custom, statutes and decided cases; but in the latter it is contained in a single document like an ordinary law.

Another distinction between constitutions can be found in the methods by which they are altered. In some countries every alteration of the constitution must be made in a particular way different from that in which laws are usually made. Such a constitution is called "rigid." Most foreign constitutions are of this type. In the British constitution alterations can be made in exactly the same way that ordinary laws are passed. It is therefore termed "flexible."

A third classification of constitutions might be made according to the relations of the executive and the legislature. In some the legislature itself appoints and dismisses the executive; in others it does not do so. To the former type belong the constitutions of Great Britain, Belgium and France, to the latter that of the United States of America.

§ 5. **The Flexibility of the British Constitution.**—As has been pointed out, the British Constitution is "flexible." This fact has had an important influence on later English history. Since every part of the Constitution is capable of alteration by the ordinary methods of legislation, it follows that those who have desired to make any change in the Constitution have endeavoured to do so in the same way that they would attempt to alter any other law. They have had no need of revolutionary methods, because the machinery for a change was ready to their hand. The only force which could prevent the accomplishment of their aims was the force of public opinion as represented in Parliament. Once they had obtained the majority of the electors of the country permanently on their side they were bound to achieve their object within a few years in the ordinary course of parliamentary legislation. If they failed to convince their countrymen of the desirability of the change they would also fail with revolutionary methods. The consequence is that Great Britain has been free from the revolutions which the rigid constitutions of other countries have provoked, while at the same time its constitution has undergone considerably greater change.

On the other hand, it is true that the maintenance of the Constitution depends on the good sense of the electors. It is from a fear that this will not be always in evidence that the safeguards of a rigid constitution have been introduced in other countries. But it should be remembered that ultimately every government depends on the favourable opinion of its subjects, and that if these permanently desire any particular thing they have the power to obtain it. All that these safeguards can be, therefore, is a check on hasty and ill-considered measures. In the British Constitution it is presumed that this function is discharged by the House of Lords; but the powers of that body have

been largely curtailed by the Parliament Act of 1911, and the institution of an effective second chamber is one of our most serious political problems.

§ 6. **The Sovereignty of Parliament.**—According to Professor Dicey the two main characteristics of the British Constitution are the "legislative sovereignty of Parliament" and the "universal rule or supremacy throughout the constitution of ordinary law."

Parliament has the power to pass or repeal any law whatever. Thus it can alter the succession to the Crown or the established religion of the land; it can change the Constitution and extend its own duration; it may provide for the compulsory purchase of private property, and may validate a marriage previously illegal. Indeed it has done all these things at various times. Perhaps the most striking instance of its power is to be found in the passing of the Septennial Act in 1716 Originally elected for three years only, the Parliament of 1715 passed this Act by which it not only fixed the duration of future Parliaments at seven years but even extended its own duration by four years.

On several occasions Parliament has endeavoured to limit the power of its successors by passing laws declared to be unchangeable. Thus in the Acts of Union with Scotland and Ireland certain provisions were intended to be immutable and to form an essential and fundamental part of the Union. One of such provisions declared the permanence of the Established Church of Ireland. Nevertheless that Church was disestablished in 1869, which fact is a clear witness to the impossibility of limiting the absolute sovereignty of Parliament. If it were limited in any way it would be no longer sovereign.

It is an essential feature of the sovereignty of Parliament that no other body in the state has any power of legislation

independent of it. At one time, as will be seen later, such a jurisdiction was claimed and exercised by the King in Council, but these days are long since past. At the present time every body within the British Empire which exercises any legislative function is subordinate to the British Parliament. This is so whether that body is the legislature of a colony or a district council. The application of this principle will be seen more clearly when the exact relations of the colonies to the mother-country come to be considered.

§ 7. **The Rule of Law.**—Every person in Great Britain is subject to and must obey the laws of the land. It is true, indeed, that the Monarch is an exception to this rule and that he "can do no wrong." But as nearly every official act of the Monarch must be done through some agent, and these agents are themselves personally responsible for the legality of the acts they do, this exception is more apparent than real.

No person is in a privileged position in this respect. The persons who compose the government of the day cannot do just as they please, but must exercise their powers strictly in accordance with the rules which Parliament has laid down. In some cases, such as extradition, where it is necessary for the well-being of the State, Parliament has given the ministers of the Crown a discretion, but it must be noticed that this discretion is itself the gift of the law and is no exception to the general rule. If any executive officer exceeds his powers, a complaint may be at once made by the person aggrieved in the courts of law, and if it is proved that the act in question is not strictly in accordance with the law the offender will be condemned. However wide the powers of the executive may be, therefore, one can never say that they are unlimited.

Again, it is to be noted that every man is subject to the same tribunals. There is not one court for the official and

another for the citizen, as is the case in certain continental countries. But the same courts have to determine the disputes of a citizen with the executive as those which determine disputes between citizens. It is therefore obviously desirable that the courts should be free from the control of the executive. As will be seen later, this freedom was attained in 1701.

Again, there is no right which a citizen possesses which he cannot maintain in the courts of law. Wherever there is a right there is a means of obtaining redress for its infringement. Thus it has been laid down by the courts that every person has a right of action against anyone who unlawfully interferes with his personal liberty. That is to say, unless the arrest of any person can be shown to be justified by the law, he is entitled to damages from the person who arrested him, and is further entitled to be set at liberty.

This latter right is enforced, if necessary, by a writ of *habeas corpus*. By this writ the court can compel any person who is imprisoned to be brought before it, and thus find out the cause of his imprisonment and, if necessary, release him. As the courts are independent of the executive, this writ provides an absolute bar to any proceeding on the part of the executive in the nature of imprisoning its political opponents. If for the good of the State it is desirable at any time in periods of political excitement that political partisans should be imprisoned, it is necessary for the executive to obtain power beforehand from Parliament for this purpose. Power is given by passing an Act of Parliament suspending the operation of the *habeas corpus* Acts in cases where a Secretary of State, or other minister named in the Act, shall declare that a person is arrested on suspicion of treason. Such an Act was passed in 1881 with regard to Ireland.

The right of freedom of speech, again, is nothing more than this: that no man can be prevented from saying anything anywhere unless he infringes some rule of the law either in what he says or in the way he says it. Anyone, whether he be policeman or private citizen, who wishes to interfere with the utterance of another must be prepared to show that that utterance has in some way been forbidden by the law.

§ 8. **The Conventions of the Constitution.**—The Constitution consists of the various rules which govern the relations of the legislature, the executive, and the judiciary and determine their composition, powers, and methods of working. These rules are of two kinds. Some are definitely laid down by the law. Thus the Act of Settlement declares that the judges hold office for life on good conduct. Rules of this kind are termed laws of the Constitution, and will be enforced by the courts of law. On the other hand, there are some rules observed habitually, which are not laid down by any law, and which could be broken without any penalty being incurred for the actual breach. To this class belong the maxims that "Ministers resign office or dissolve Parliament when they have ceased to command the confidence of the House of Commons," and that "Parliament ought to meet at least once a year."

Such rules are termed "Conventions of the Constitution," and generally refer to the exercise of the King's prerogative on the advice of the Cabinet, or of the privileges of the Houses of Parliament. In reality they are understandings observed in the conduct of the government of the country by which the will of the nation is carried out. There is, for example, no method legally to compel a ministry to resign or dissolve when they are defeated on some vital question in the House of Commons,

but unless they do the one or the other they will continue in office without the support of the nation as a whole.

Why, then, are these conventions observed? Do they rest on nothing more than the good faith of those who conduct the various institutions of government? The answer to this question is found in the fact that although the breach of these conventions is not of itself contrary to the law, yet the inevitable consequence of any breach must be to compel the convention breaker to go further and break the actual law of the land and thus come into conflict with the courts. An example of this is to be found in the rule that Parliament must meet at least once a year. If it did not, those taxes that are voted yearly would cease to be due and it would become difficult to carry on the administration without raising money unlawfully. Again, the annual Army Act which legalises for a year the existence of a standing army would cease to operate and the maintenance of that portion of the country's defensive forces would become impossible without contravening the law of the land as expressed in the Bill of Rights.

If Ministers refused to resign or advise a dissolution after having lost the confidence of the House of Commons, their opponents in that House could refuse to pass any measure they introduced. This would have an effect similar to that produced by the non-meeting of Parliament for a year and would impel the Ministry to illegal practices if they determined to remain in power. As a matter of fact such a crisis would not arise, because the King would dissolve Parliament in such a case whether his ministers so advised or not.

§ 9. The Growth of the Constitution.—As has been already stated, the British Constitution is not embodied in one single document, but is the outcome of gradual growth and development. Some of its features at the present day

may appear archaic and to have outlasted the measure of their utility. It should be remembered, however, that the British Constitution resembles a vast machine which requires the most delicate and complicated adjustment, so that it would be unwise to condemn at once as useless any provision that to the casual observer seems of little value. An instance of this occurs, as will be seen later, in the composition of the various boards which have developed from committees of the Privy Council.

The history of the Constitution can be traced from a time when the King did everything, until at the present day he does nothing personally. Theoretically, even now, the King is the source from which all the functions of government spring. Laws are passed by the "King's most Excellent Majesty by and with the advice and consent of" Parliament. Executive acts are done in the King's name, and the heads of the administrative departments are his ministers. Lastly, the King is the fountain of justice, and the judges are appointed by him to keep his peace and to dispense justice in his name. This theoretical aspect of the functions of government illustrates, better perhaps than anything else, the unbroken character of the development of the British Constitution. The history of that Constitution is indeed the history of the gradual limitation of the King's power in the various spheres of government, until in all branches of the administration it can now be exercised only in accordance with a settled procedure laid down and determined by the laws and conventions of the Constitution. The English King, however, has never been an autocratic despot. There never has been a time when he was not limited to some extent by a council of the nation.

It is in the development of this council and the gradual acquisition by it of the control over matters which were at

first almost wholly in the hands of the King that the clue is to be found for tracing the development of the Constitution. The first step was the acquisition of the control over taxation. This, once acquired, led naturally and of necessity to the control over legislation. The control over the Executive was the last to be acquired, but is now as complete as the control over taxation and legislation.

In the following pages the Legislature, the Executive, and the Judiciary will be separately treated. First of all their gradual growth and development will be traced, and then their composition and method of working at the present day will be considered. Some account will also be given of the nature and working of Local Government in England and Wales, and the book will conclude with a consideration of the relations which exist between Great Britain and its colonies and dependencies.

PART II.

THE LEGISLATURE.

CHAPTER II.

THE TITLE TO THE CROWN.

§ 10. The Crown before the Tudors.—The succession to the Crown of England has rested partly upon election by the popular assembly of the day and partly upon hereditary right. At times the views of kingship which these titles embody have been in conflict, but as a general rule each king has endeavoured to support his claim to the throne on both these grounds. To-day the title of George V. rests upon the fact that he is the direct heir of Sophia, the widow of the Elector of Hanover, and that the Crown of England was settled on her heirs by the Act of Settlement, 1701.

Before the Norman Conquest the kingship was elective, but the choice of the Witan (p. 17) was confined to the royal family, and theoretically the eldest son of the late King was preferred. In practice, however, the Witan did little more than accept as king the member of the royal house whom the nomination of the late King or his own personal influence imposed on them. A king could be deposed for bad government, but in such cases the Witan did little more than recognise officially the result of a

successful rebellion. With the introduction of feudalism into England the King was regarded as supreme landholder, and hence the idea that the Crown ought to descend like an estate in land, or, in other words, by hereditary right, grew stronger. Yet Henry II. was the first king after the Conquest who had a good hereditary title, and the reign of Edward I. was the first to begin before his coronation.

The Wars of the Roses were in one aspect dynastic quarrels between the Lancastrians and the Yorkists to determine the right to the Crown. In this period the desire of the various kings for the support of a Parliamentary title was most marked. In 1404 and 1406 Parliament settled the Crown on Henry IV. and his heirs; in 1460 the title of Henry VI. was recognised for his life, and in 1484 the Crown was settled on the heirs of Richard III. The fact, however, that the last two of these settlements were but of short duration shows the weakness of Parliament at this period.

§ 11. **The Tudors and the Stuarts.**—The period of, roughly, two hundred years which is covered by these reigns shows the gradual triumph of the principle of parliamentary choice over that of hereditary right. In 1485 the Crown was settled on Henry VII. and his heirs, while during the reign of Henry VIII. the succession was regulated on several occasions. The most important of these was in 1536, when Parliament gave the King power to nominate his successors by will. After his three children, Edward, Mary, and Elizabeth, and their issue, Henry directed that the Crown should be held by the descendants of his younger sister Mary, Duchess of Suffolk.

But on the death of Elizabeth, James VI. of Scotland, who was the descendant of Henry's elder sister Margaret, came to the throne, and his title was confirmed by an Act

of Parliament which recited that he was entitled by descent. No further question arose as to the succession until James II. fled in 1688. The interregnum which occurred during the Commonwealth must be regarded as an emphatic protest against the misuse of the royal power under the doctrine of the divine right of kings. It foreshadowed the final triumph of the elective theory of kingship in 1688. It should be noted that, in law, the reign of Charles II. dates from 1649, when his father was beheaded.

§ 12. **The Revolution Settlement.**—In the cases of Edward II. and Richard II. the abdication or resignation of the Crown, though in fact compulsory, was in form voluntary. In like manner, by the Declaration of Right, 1689, it was stated that James II. had abdicated the government and that the throne was thereby vacant. The Crown was then given to William Prince of Orange and Mary his wife, who was the daughter of James II. The Declaration of Right was embodied in the Bill of Rights 1689, which provided for the succession after the deaths of William and Mary. Further provision for the succession had, however, to be made owing to the fact that the succession established by the Bill of Rights showed signs of failure. This was done finally by the Act of Settlement 1701, which made the Crown descend to the heirs of Sophia, the Dowager Electress of Hanover and granddaughter of James I., being Protestants.

It had previously been provided by the Bill of Rights "that every person that is or shall be reconciled to, or shall hold communion with the See or Church of Rome, or shall profess the Popish religion, or shall marry a Papist, shall be excluded" from and incapable of inheriting the Crown, and that in such cases the people of the realm should be absolved from their allegiance.

Further, that every monarch on coming to the throne should make a declaration against transubstantiation and other Popish doctrines. These safeguards for a Protestant succession were confirmed by the Act of Settlement, which also provided "that whosoever shall hereafter come to the possession of this Crown shall join in communion with the Church of England as by law established." It is in accordance with these rules laid down by Parliament that the succession to the Crown of England is now determined.

By the Act of Union with Scotland in 1707 the two kingdoms of England and Scotland were united as Great Britain, and it was provided that the succession should be the same as that laid down by the Act of Settlement. A similar provision was made in the Act of Union with Ireland in 1800. The title to India and the British Dominions and Dependencies follows the same rule.

By the Royal Marriage Act, 1772, the Sovereign's consent is necessary to the marriage of any descendant of George II. except the issue of princesses married into foreign families. But if over twenty-five, such descendant can marry without consent after giving twelve months' notice to the Privy Council and in the absence of Parliamentary disapproval. Unless these formalities are observed the marriage is invalid, and the children of such a marriage are therefore not eligible for the Crown.

In the event of an infant succeeding to the throne, or of the King's becoming insane, a Regent is appointed. In the former case his appointment is usually provided for beforehand by Act of Parliament, in the latter the practice does not appear to be quite settled.

§ 13. Allegiance and Treason.—Allegiance is the duty to be faithful to the King owed by every person residing in the country. On leaving the country an alien becomes

free from this tie, although a British subject does not. A man can now divest himself of his character of a British subject under the British Nationality and Status of Aliens Act, 1914,[1] by becoming the subject of another country, or by a declaration made under the provisions of the Act. The same Act permits an alien to become a British subject on certain conditions, the chief of which is five years' residence in Great Britain. The Home Secretary has considerable power of discretion as to allowing any alien either to enter the country or to become a naturalised British subject.

Treason is the violation of allegiance, and consists of the offence of not being faithful to the King and the State. The definition of treason has varied considerably from time to time, but at the present day it is practically confined to (1) acts or plots to kill, injure, or restrain the King, (2) making war against the King, (3) adhering to the King's enemies. At the beginning of Queen Victoria's reign several attacks were made upon her by lunatics and others. These outrages strictly constituted treason, but an Act of 1842 enabled them to be treated as ordinary offences, and so prevented the assailants from obtaining the notoriety which a trial for treason would have afforded. Another Act some six years later provided for a similar mode of treatment in the case of certain offences against the State which, while being treason under the old law, were not directed against the person of the King, such as a conspiracy to levy war or the incitement of foreigners to invade the kingdom. But the old law is not repealed, and in case of necessity it is still possible for any of these offences to be treated as treason.

[1] This act repealed the Naturalisation Act of 1870 and consolidated and amended the law on the subject.

CHAPTER III.

THE FORM OF THE HOUSE OF COMMONS.

§ 14. The Anglo-Saxon Witan[1] (*i.e.* wise men) has been long generally, though erroneously, regarded as the stock from which our present Parliament has sprung. How little truth there is in this idea is shown by the fact that the Witan was in no sense a representative assembly. Its members represented themselves, and had no delegated authority to act for the rest of the people. As to the composition and powers of the body there has been much discussion. So far as evidence is available, it tends to show that the Witan usually consisted of the members of the royal family, the royal officials such as the Ealdormen, important Church dignitaries such as the bishops and great abbots, and other persons of influence or importance whom the King asked to be present. There is no evidence that any particular persons had a right to assist in the deliberations of this body. Some men, of course, owing to their position in the country would naturally expect to receive a summons, and it might not be politic for the King to omit calling to his councils men whom it was dangerous to offend or whose cooperation was desired. But presence at the Witan depended on the King's summons.

§ 15. The Commune Concilium or Magnum Concilium took the place of the Witan shortly after the Norman Conquest, though exactly how soon is uncertain. It was

[1] The term Witena-gemot ("meeting of the wise men") does not seem to have any official authority.

in principle a feudal court attended by the King's tenants-in-chief, *i.e.* those who held their land directly from the King. It thus differed from the Witan in that "tenure" and not "wisdom" was the qualification for membership. But membership was not entirely confined to the land-owners: royal officials, who were not necessarily tenants-in-chief, also attended, and from an early date great ecclesiastical dignitaries, the archbishops, bishops, and abbots, were present, though these last in all probability attended in their capacity of tenants-in-chief, all of them being great landowners.

In theory it was the duty of all the tenants-in-chief to be present at the meetings of this council, but such a complete attendance would have early become impossible, and the King soon formed the practice of selecting those to whom writs of summons should be addressed. Only on three occasions, viz. at Salisbury in 1086 and 1116 and at the Assize of Clarendon in 1166, does a full meeting appear to have taken place. (As Gneist says, "throughout medieval times the summons to attend National Councils was mainly regarded as an irksome duty, which all would have gladly declined.)'

With the loss of Normandy in John's reign the importance of the Great Council increased, the barons combining against the centralising policy of the Crown, which had rapidly developed under Henry II. Hence arose the movement that led to Magna Carta (1215), by which the Council acquired fresh power and importance.

The method of summoning this assembly is laid down by Clause 14 of Magna Carta, 1215, which has been thus translated:—"In order to take the common counsel of the Nation . . . . the King shall cause to be summoned the archbishops, bishops, earls, and greater barons, by writ directed to each severally, and all other tenants-in-chief by

a general writ addressed to the sheriff of each shire; . . . . the consent of those present on the appointed day shall bind those who, though summoned, shall not have attended." This may perhaps be regarded as foreshadowing that separation of the assembly into two Houses which subsequently occurred. It clearly shows the inequality of status then existing among those who were summoned.

This clause of Magna Carta cannot be regarded, however, as the origin of popular representation. Although the decision of those who were present was to bind the absentees, the members of the council were not summoned as representatives. This was first done in 1213, when the King directed four discreet men from each county to be sent to confer with him at Oxford. Representatives of the towns were first summoned by Simon de Montfort to the Parliament of 1265. To this Parliament were called two citizens or burgesses from twenty-one cities or boroughs, mentioned individually by name, as well as two knights from each shire. For this reason de Montfort has been called "the founder of the House of Commons." He is, however, scarcely entitled to this designation, as the assembly he convened represented merely his own supporters, and it is open to question whether he intended this type of Parliament to be permanent. Still, subsequent development was made on the basis he then established.

§ 16. The Model Parliament.—In the thirty years following de Montfort's Parliament counties or towns, or both, were on various occasions represented in the National Assembly, but such representation became regular only after "the Model Parliament" of 1295. To this Parliament were summoned by separate writ the archbishops, bishops, and abbots, seven earls and forty-one barons. General writs were also issued to the sheriffs for the election of two knights from each county, two citizens from each city,

ace 1044

and two burgesses from each borough. Besides this, there was attached to the writs sent to the archbishops and bishops what is known as the "praemunientes clause." By this they were directed to cause the attendance in person of the archdeacons and heads of cathedral chapters, and also of proctors to represent the other clergy. It is noteworthy that all these various persons who were summoned did not form one great assembly, although they met in the presence of the King. The aid or grant of money which the King desired was voted by the barons and knights, the burgesses, and the clergy, separately, and each voted a different proportion of their goods.

§ 17. **The Attendance of the Clergy.**—As has been stated before, the inferior clergy were summoned to the Parliament of 1295 by their representative proctors. Their attendance, however, was not a willing one, as they wished to keep themselves separate, as a privileged class. They had already two assemblies or Convocations of their own, one in the province of Canterbury and the other in that of York. These, like the Parliament, were of gradual development and had become representative by 1283. In them the clergy granted their aids to the King, and, as money was after all the real reason for his desire for the presence of the clergy at the central assembly, it is perhaps not to be wondered at that they soon ceased to attend this. After the end of the fourteenth century they do not appear ever to have attended. Thus the design of Edward I. to make a permanent assembly of the three estates of the realm, the Lords, the Commons, and the clergy, was not fulfilled. It is interesting to note that the clergy are still summoned by the praemunientes clause, although they do not attend.

§ 18. **Convocation.**—A few words may not be out of place here with regard to the history of Convocation after the fourteenth century. The clergy retained the right of

taxing themselves in convocation, but after the reign of Henry VIII. their grants were always confirmed by Parliament. In 1664, however, an arrangement was made between Lord Clarendon and Archbishop Sheldon by which the clergy ceased to tax themselves separately, and acquired in return the right of voting in respect of their glebes for the election of members of the House of Commons. This has been described as "the greatest alteration in the Constitution ever made without an express law." In spite of this arrangement Convocation still continued to meet for other purposes down to 1717. But from that date until 1850 it was always prorogued immediately after meeting. Since 1850 it has frequently discussed church matters. Each convocation consists of two houses, the bishops forming the upper, and the deans, archdeacons, and proctors the lower. Since 1884 these two houses have deliberated separately.

§ 19. **The Separation of the Houses.**—It has already been mentioned that Magna Carta provided for the summoning of the greater barons separately and the lesser barons by writs addressed to the sheriffs. Ultimately the division of the Parliament into two Houses took place on these lines. Those who had a separate summons formed the Upper House, and those who were elected for the counties and the boroughs formed the Lower House. The knights of the shire were by birth and breeding much nearer to the barons than the burgesses, and for some time they sat and granted aids to the King with the former. The burgesses from the first deliberated and voted apart, and it was only gradually that the knights drew away from the barons and joined the burgesses. The chief reasons for this were the common representative character and community of interests of the knights and the burgesses. The separation may be dated from the first years of the reign

of Edward III., and became definitely established in the course of the reign. Since that time Parliament has kept the form in which we now know it.

§ 20. **The further history of the House of Commons** must be confined to a statement of the changes which were gradually made in the qualifications of its members and those who elected them and in the numbers of which it was composed. By the time that the two Houses separated it had been determined that the Lower House should be composed of representatives of the counties and boroughs. The number of county representatives remained fairly constant, except for the addition of members from the Welsh counties in the reign of Henry VIII., and from those of Scotland and Ireland on the passing of the respective Acts of Union.

The borough representatives tended to increase greatly in number. This was due to the fact that the King issued writs to a gradually increasing number of boroughs, many of which were only small towns and largely under royal domination. In the time of Edward I. the number of borough representatives seems to have averaged seventy-five. This had increased to over two hundred by the close of the reign of Edward IV. During the time of the Tudors the number of the Lower House was nearly doubled, and Elizabeth alone added sixty-two new members. The borough members grew gradually less and less representative, owing to the fact that in many of the boroughs the elective power was confined to a few individuals and that these were open to bribery. It has been stated that, in 1816, 487 members out of a total of 658 were returned upon the nomination of the Government and 267 private patrons.

A rearrangement of the borough representation was made by the Reform Act of 1832. Fifty-six of the rotten

boroughs, as they were called, were disfranchised altogether, while others lost one member only. In their place certain large towns which had previously had no representation were given members. At the same time the number of county members for England and Wales was increased from 95 to 159. Reform Acts dealing with Scotland and Ireland were also passed in the same year. The total membership of the House of Commons was fixed at 658. This number was increased to 670 in 1885 and in 1918 to 707 by the Representation of the People Act. Under this Act a further redistribution of seats was effected, the unit for Great Britain being one seat for every 70,000 inhabitants. England now returns 492 members, Wales 36, and Scotland 74. Ireland was to return 105 members, but this arrangement is no longer in force.

§ 21. **The Franchise before 1918.**—The qualifications required of voters for county and borough representatives differed, and the two franchises must be considered separately. Originally all those who were entitled to attend the county court could vote in the election of knights of a shire. These seem to have included all the landowners whether they held direct from the King or of an intermediate lord. The sheriff presided over the election. In 1430 the right to vote was restricted to those residents who owned freeholds of the value of forty shillings a year. No subsequent change was made in the franchise, *i.e.* the qualification or right of a person to a vote, until the Act of 1832, which restricted the existing qualification in various ways and created a new property qualification. This was finally fixed at £5 by the Representation of the People Act, 1867. The last-mentioned Act also introduced a franchise depending on the occupation of premises rated at £12. In 1884 the county franchise was largely assimilated to that of the boroughs.

Before 1832 there was no general rule as to the right to vote for a borough representative. The qualifications varied in different boroughs. They may be summarised under four heads—(1) the holding of land, (2) residence combined with payment of scot and lot, or, as we should say, rates and taxes, (3) the freedom of the borough, (4) corporate office. With two exceptions these qualifications were abolished by the Reform Act of 1832. The exceptions were the forty-shilling freehold qualification in towns that were counties and that arising from the freedom of a chartered town. From 1832 to 1867 the borough franchise depended on the occupation of premises of the clear yearly value of £10, subject to certain conditions as to residence and payment of rates. The household and lodger franchises in force till 1918 were introduced by the Representation of the People Act 1867.

In 1885 an attempt was made to divide up the country into constituencies which should be roughly of the same size. This had become possible owing to the assimilation of the borough and county franchises. Previously the taking away of a member from a borough had entailed the disfranchisement of the majority of the borough electors, but this result no longer followed. Hence a large number of towns which had returned members were thrown into county divisions, while the larger towns were split up into districts and given a representation more in accordance with their size. The counties, too, were divided into a much larger number of districts than formerly.

The Franchise from 1884 to 1918 depended on the possession of one of the following qualifications:—

(1) Forty-shilling freeholds, if of inheritance, or in occupation, or acquired by marriage, marriage-settlement, will, benefice or office.

(2) Other property of £5 yearly value, except that the

value of leaseholds had to be £50 if the original term was less than sixty years, and no term less than twenty years gave a vote.

The above only applied to counties and in certain counties of cities such as Bristol, Exeter and Norwich.

(3) Twelve months' occupation of land or a house of the clear yearly value of £10.

(4) Twelve months' occupation of a dwelling-house for which the rates had been paid, combined with residence. This included occupation by virtue of any office, service, or employment, which was known as the "service franchise."

(5) Twelve months' occupation of lodgings of the clear yearly value of £10 unfurnished.

(6) Freedom of a borough if this gave a right to vote before 1832. The freedom must be acquired by birth or servitude, *i.e.* apprenticeship, and there were certain qualifications as to residence. In the City of London the freeman had to be a liveryman of one of the City Companies.

(7) A degree of certain Universities subject to various conditions.

The Scottish and Irish qualifications were generally similar to those set out above which relate to England.

Women, infants, peers, aliens, idiots, and lunatics might not vote, even if in other respects they possessed the necessary qualifications. Persons employed for the purpose of an election could not vote in that election. Parochial relief was a bar to the right to vote: but this did not apply to medical relief. Another bar was conviction for treason, felony or corrupt practices. In the last case the disqualification extended for seven years, and in the other two until the sentence had been served or a pardon granted. Provisions were also in force to prevent the creation of property votes merely for election purposes.

§ 22. **The Franchise at the present time.**—Continuous and widespread demands for the further extension of the franchise—especially to women—and for electoral reforms, led in 1918 to drastic changes in these matters. An Act, the main principles of which had been settled in advance by a large committee consisting of representatives of all political parties and presided over by the Speaker, was without much difficulty passed through Parliament in that year. Its easy passage may be attributed to the lull in party strife brought about by the war and the formation of a Coalition Government. The main changes are as follows:—

(1) Instead of the seven alternative qualifications there are now three, namely, in respect of (*a*) residence, (*b*) occupation of business premises, (*c*) possession of a university degree or its equivalent.

(*a*) and (*b*).—Male electors must be of full age and have resided, or occupied business premises of an annual value of not less than £10, in the same parliamentary borough or county, or one contiguous thereto, for six months ending on January 15 or July 15 in any year. A woman voter must be thirty years of age, and entitled to be registered as a local government elector in respect of the occupation of premises of a yearly value of not less than five pounds, or of a dwelling house; or she must be the wife of a husband entitled to be so registered. Lodgers in unfurnished, but not furnished, rooms can vote, if otherwise qualified.

(*c*) The University franchise is extended to men of twenty-one years and women of thirty years of age, who have taken a degree, or, in the case of women, its equivalent. In Scotland other scholastic attainments are admitted as qualifications.

(2) No person may vote at a general election for more than two constituencies, for one of which, in the case of a

man, there must be a residence qualification, and, in the case of a woman, a local government qualification (her own or her husband's). The second vote must rest on a different qualification.

(3) Receipt of poor relief or other alms no longer counts as a disqualification. The old disqualifications through legal incapacity remain. But the incapacity of peers does not extend to peeresses in their own right.

(4) Two registers of electors are to be prepared each year, one in the spring, and the other in the autumn. University registers may be made up as the governing bodies appoint.

(5) In university constituencies returning two or more members the elections must be conducted on the principle of proportional representation, each elector having one transferable vote.

(6) At a general election all polls are to be held on the same day, except in the cases of Orkney and Shetland, and university elections. Provision is made for absent electors to vote, in certain cases by proxy.

Previous to the passing of this act the number of persons (all males) qualified for registration as parliamentary electors was about 8,350,000. The number now qualified is about 16,000,000, of whom 6,000,000 are women.

§ 23. **Who may be an M.P.**—There is now no property or religious qualification for membership of the House of Commons. By an Act of Henry V. residence in the constituency was required, but this requirement became obsolete, and was abolished in 1774. In 1710 a property qualification was imposed, but it was constantly evaded, and was finally repealed in 1858.

One of the chief bars to membership was found in the oath which members had to take before they could sit in the House. The form in which this was framed prevented per-

sons with certain religious beliefs from taking it. Various changes were made, and as a consequence it became possible for Roman Catholics in 1829, Quakers, Moravians, and Separatists in 1834, and Jews in 1858 to become members. In 1888 an affirmation was made sufficient for those who dislike to take an oath. This prevents the recurrence of such disputes as those which arose with regard to Mr. Bradlaugh, an atheist, between 1880 and 1886.

Women are now eligible for membership under the Parliament (Qualification of Women) Act 1918.

The following persons are, however, disqualified from becoming members:—

(1) Minors, aliens, idiots, and lunatics.

(2) Peers, except that an Irish non-representative peer may sit for a British constituency. The wife of a peer does not share her husband's disqualification.

(3) Clergy of the Church of England, the Church of Scotland, and the Roman Catholic Church. Ministers of the Church of England may free themselves from this disqualification, and re-enter secular life under an Act of 1870. Nonconformist ministers may become members.

(4) Government contractors.

(5) Persons convicted of treason or felony, unless they have served their sentence or been pardoned. Bankrupts. Persons found guilty of corrupt practices may not be elected for seven years for any constituency, and never for that where the offence was committed; but if the offence is the unauthorised act of an agent, the only penalty is an incapacity for being elected for the constituency in question during the next seven years.

(6) Pensioners of the Crown; but exceptions are made for holders of civil service and diplomatic pensions.

(7) Certain office holders. Judges: Government clerks and officials: returning officers for their own constituencies:

all persons holding offices of profit under the Crown created since October 25th, 1705 (with certain exceptions). Further, any member who accepts an office of profit under the Crown created before that date other than a commission in the army or navy thereby vacates his seat, although he may be re-elected. It is in accordance with this rule that the head of a Government office, such as the Home Secretary, requires re-election after appointment. This provision is also used to enable members to retire if they wish. A seat cannot be resigned, but the member accepts some nominal office such as the stewardship of the Chiltern Hundreds. By this means the seat is vacated and a day or two later the office is resigned.

(8) It may be noted that from 1372 to 1871 no lawyer could legally sit for a county constituency.

Besides the disqualifications set out above, a member may vacate his seat for various reasons:—

(1) By the acceptance of office, as noticed above.

(2) By succeeding to a peerage or being made a peer; but this does not apply to non-representative Irish peers, provided they sit for a constituency in Great Britain.

(3) By death.

(4) By lunacy continuing for six months.

(5) By bankruptcy, unless it is annulled or a discharge granted within six months, with a certificate that it was not caused by misconduct.

(6) By becoming naturalised in a foreign country.

(7) The House has an inherent right to expel a member for conduct rendering him unfit to take part in its deliberations. This vacates the seat, but does not prevent re-election of the member. Thus John Wilkes, who was expelled for seditious libel, was three times re-elected, and the action of the House in finally giving his seat to his opponent was subsequently declared unconstitutional.

§ 24. **The Duration of Parliament.**—One of the Ordinances of the Lords Ordainers in 1311 directed that Parliament should meet annually, and this was reaffirmed by legislation in 1330 and 1362. The rule was observed during the reign of Edward III., and sometimes two, three, or even four Parliaments met in one year. In the fifteenth century there were long intermissions, and in the reign of Henry VII., which extended over a period of twenty-four years, seven Parliaments only were summoned of which only one occurred in the last thirteen years. Again, there was only one Parliament between 1515 and 1528, but in the reign of Elizabeth a summons was issued on the average once in three and a half years.

James I. summoned only one Parliament between 1610 and 1621, and none was called from 1629 to 1640. Subsequently the Triennial Act, 1641, was passed, which provided that Parliament should be summoned every third year. In 1664 this was repealed, but it was provided that three years should not go by without a Parliament, while the Bill of Rights, 1689, contained the statement that "Parliament ought to be held frequently." Since the Revolution Parliament has met practically every year, but this rule is merely a "Convention of the Constitution," as there is no statutory provision to that effect. If Parliament were not to meet for a year, those taxes which are granted annually would cease and the Government would find it difficult to carry on its work. But a greater difficulty still would arise. Power to control the members of the army is given by the annual Army Act, and if this were not passed it would be impossible to maintain the army. Hence the Crown is in practice forced to summon Parliament to vote supplies and to pass the annual Army Act.

The duration of Parliament was first affected by the Triennial Act of 1694, which provided that no Parliament

should continue longer than three years, a period which was extended to seven years in 1716 by the Septennial Act. The Parliament Act of 1911 limited the duration of Parliament to five years, but Parliament may, as in 1915, extend its own existence by an Act passed through both Houses and assented to by the Sovereign.

Formerly the death of the Sovereign at once dissolved Parliament, but by an Act of 1696 Parliament was to continue for six months unless previously dissolved. Since 1867 the death of the monarch does not affect the duration of Parliament.

Originally a fresh Parliament was summoned each year, but later more than one session was sometimes held. The ten Parliaments of Elizabeth's reign held thirteen sessions and the four of James I. eight sessions. The Long Parliament (1640-1660) and the Pensionary Parliament (1661-1679) are well-known examples of long-lived Parliaments.

§ 25. **How Parliament is summoned.**—A Proclamation is issued that the King desires to have the advice of his people in Parliament. Then an Order in Council is made directing the Lord High Chancellor to issue the necessary writs. The peers are summoned by separate writs. The writs for members of the House of Commons are directed to the various returning officers, who conduct the necessary elections and subsequently make a return stating who has been elected.

§ 26. **The Conduct of an Election.**—The returning officer gives public notice of the receipt of the writ and appoints a day for receiving nominations, which must be in a particular form and accompanied by a deposit to cover the expenses of the election. If only one candidate is nominated he is declared to be elected, but if two or more are nominated a poll is necessary. A day is

named, and the election is made by ballot, so that no one may know how any elector has voted. The votes are then counted, and the candidate with the greatest number is declared elected. In the case of a tie the returning officer has a casting vote. Very stringent rules are laid down to prevent anything in the shape of bribery or corruption. The candidates are allowed to spend only a fixed amount of money in advocating their claims, *i.e.* 7d. for each voter in a county constituency and 5d. in a borough. They can also employ only a certain number of people for payment in the work of the election. An election agent who manages the details of the election is usually employed on each side. After the election a strict account has to be rendered of all expenses incurred during the election.

The House of Commons itself formerly decided all disputes as to elections, but in 1868 this function was transferred to two judges of the High Court of Justice.

§ 27. **The Meeting of Parliament.**—Parliament meets on the day appointed, and the first duty of the Commons is to appoint a Speaker. He acts as chairman of the House and also as its representative in communicating with the Crown. After his appointment has been approved, the newly elected members take the oath of allegiance. The Speech from the Throne, which is a statement of the objects of summons, is then read in the House of Lords, where the Commons are summoned to hear it. After some formal business has been transacted in the House of Commons to show its independence of the Crown, the Speech is then re-read there by the Speaker, and the real business of the session begins.

§ 28. **Adjournment, Prorogation, and Dissolution.**—While Parliament is sitting it is necessary for it to be adjourned from day to day and sometimes for longer

periods. Each House has the sole control over its own adjournment, which is effected by a motion agreed to by the House. If both Houses are adjourned for more than fourteen days the Sovereign can issue a Proclamation calling on them to re-assemble after six days.

A Parliament does not sit continuously throughout the whole of its existence, but for certain periods known as sessions. As a general rule there is only one session in each year, commencing about the end of January or beginning of February and ending in August. Occasionally another session is held in the autumn. During the War, however, autumn sessions became the rule. The dates of the beginning and ending of a session are determined by the Sovereign acting on the advice of the Prime Minister. When the Prime Minister thinks that the Parliament has sat long enough and that the session should end he advises the Sovereign accordingly, and the latter in person or by special representatives prorogues it until a certain date. It will assemble again on this date, unless it is further prorogued in the meantime.

It has already been seen that the maximum duration of a Parliament is now fixed at five years, but the Sovereign may, on the advice of his Ministers, dissolve it at any time before the expiration of that period. When a dissolution is contemplated, the present practice is for the King first to prorogue Parliament, and then to issue a Proclamation dissolving it. The same Proclamation provides for the summons of the next Parliament on a day named; and, as we have seen, it is accompanied by an Order in Council commanding the issue of the writs necessary for that purpose.

CHAPTER IV.

THE FORM OF THE HOUSE OF LORDS.

§ 29. **General History.**—The origin of the House of Lords can be traced to the Commune Concilium. Magna Carta, as we have seen, sanctioned the organisation of this body on a feudal basis for purposes of taxation. It acquired additional power during the long minority of Henry III., when the whole supervision of the administration came into its hands. The magnates of the realm had thus a corporate existence in a recognised assembly with definite duties before the date when Edward I. bade them share the most important of their powers with the representatives of the Commons. The essential distinction to make between the Commune Concilium and the House of Lords is the growth and ultimate triumph of the hereditary principle.

The various ranks of the peerage were gradually created. The first duke was the Black Prince, who was created Duke of Cornwall in 1337. The title of Marquess dates from 1385 and that of Viscount from 1440. Sixteen representative peers of Scotland were added in 1707, and twenty-eight of Ireland in 1801. The Appellate Jurisdiction Act of 1876 further increased the House by the addition of four—now six—Lords of Appeal in Ordinary.

The numbers of the House have varied from time to time, but originally the spiritual peers were in a majority. The Wars of the Roses thinned the ranks of the lay peers. Fifty-three were summoned in 1454, but only 29 in 1485. At the death of Elizabeth their number was 59, and this had increased to 168 by the death of Anne. No fewer

than 388 peerages were created during the reign of George III., but some of these and of the older ones became extinct, and the number of lay peers at his death was 342. The reign of Queen Victoria saw the creation of 373 lay peers, and at her death the membership of the House of Lords had reached a total of 591.

§ 30. **At the present day** (May 1920) the House of Lords is composed of 3 Peers of the Blood Royal; 2 Archbishops and 24 Bishops; 613 Peers of the United Kingdom, consisting of 18 Dukes, 29 Marquesses, 124 Earls, 64 Viscounts, and 378 Barons; 16 Scottish representative peers; 28 Irish representative peers, and 6 Lords of Appeal in Ordinary,—making a total of 692.

§ 31. **The Spiritual Peers** were formerly the most influential and powerful in the assembly and outnumbered their lay colleagues. The dissolution of the monasteries in the reign of Henry VIII. greatly diminished their number, which was finally fixed at twenty-six. In 1801 one archbishop and three bishops of the Irish Church were added, but on the disestablishment of that Church in 1869 they lost their right to be summoned. Although fresh bishoprics have been created the number of seats to which the spiritual peers are entitled has not increased.

The twenty-six seats are thus allotted. The archbishops of Canterbury and York and the bishops of London, Durham, and Winchester are always entitled to a summons. The remaining twenty-one seats are filled by the twenty-one bishops who have longest held an English see. The Bishop of Sodor and Man has no right to speak or vote, but there is some ground for the opinion that he has a right to a seat. On resignation of his see a bishop loses his right to a seat in the House of Lords. In 1642 an Act was passed taking away the right of the bishops to sit in the House of Lords, but this was repealed in 1660.

§ 32. **The Peerage of the United Kingdom.** The meaning of the terms "baron" and "peer" has changed considerably. Originally a baron was a tenant of land who held direct of the Crown and owed military service to the King, and as such he was usually summoned to the Magnum Concilium. Before the time of Magna Carta a distinction had grown up between the greater barons, who received a special writ of summons, and the lesser tenants-in-chief, who were summoned collectively through the sheriffs, and ceased to attend. Under Henry III. the Magnum Concilium consisted of the greater tenants-in-chief. Nevertheless, Edward I. acted on the principle that it was for the King to determine who should and who should not be summoned, and summoned people who held no lands of the Crown. The writ by which this summons was made ultimately became the sole condition for attendance.

At first the King exercised considerable discretion in the issuing of writs, and it did not follow that because a man had been summoned his heir would be summoned after him; but in time the territorial magnates established a right to be summoned, and as the baronies were hereditary the analogy was applied to a writ of summons, and the perpetual or hereditary summons became the rule. This was established in practice, if not in theory, by the end of the fourteenth century. Thus there grew up the conception of an hereditary "peerage" (the term "peer" originally meant "equal"), though the full legal theory of peerage was not elaborated till quite modern times.

It was sometimes difficult to know who the heir of a baron really was, as there were no title deeds or documents stating precisely the rules of descent. It was different with the other ranks of the peerage, which were created by letters patent laying down definite rules governing the succession to the dignity. The certainty which this method

of creation gave was so great that it was applied to the creation of baronies. The first instance occurs in 1387, and after the reign of Henry VI. it became the usual method. But in the case of a modern claim to a barony which was not so created, proof must be given that a writ of summons was issued and that the person summoned took his seat.

At the present day a new peer of the United Kingdom is always created by letters patent. A writ of summons is sent to the new peer, and on his first attendance at the House of Lords this, with the patent, is entered upon the Journals of the House. The House of Lords itself determines any doubtful claims as to peerages.

§ 33. **Scottish Peers.**—The Act of Union with Scotland provided that sixteen Scottish peers should sit in the House of Lords as representatives of the Scottish peerage. These sixteen are elected by the Scottish peers at Holyrood before the commencement of each Parliament. Their right to sit and vote only continues for the duration of the Parliament. They do not receive a special summons, but a list of those elected is sent to the Clerk of the House. Only those Scottish peers who are not peers of the United Kingdom can be elected. The Crown is debarred from creating any more Scottish peers, and as a number of Scottish peerages have become extinct or their holders have been created peers of the United Kingdom, the number of Scottish peers who have no seat in the House of Lords tends gradually to decrease. In 1707 the peerage of Scotland was nearly as large as that of England, but in December 1909 there were only twenty Scottish peers who had no seat in the House of Lords.

§ 34. **Irish Peers.**—Twenty-eight Irish representative peers were added to the House of Lords by the Act of Union in 1801. They are elected for life and not merely

for the duration of a Parliament like the Scottish peers. All the peers of Ireland are entitled to vote for their election. It was provided by the Act of Union that only one Irish peerage should be created for every three that became extinct until the number was reduced to one hundred, and that the peerage should be subsequently kept at this figure by the creation of a new Irish peerage for every one that became extinct or whose holder acquired a seat in the House of Lords as a peer of the United Kingdom. In 1801 the Irish peerage numbered 234, but in December 1909 the number of Irish peers who had no seat in the House of Lords had been reduced to sixty-five. These peers, as has been previously stated, might be elected to the House of Commons for any constituency in Great Britain, but not for an Irish constituency.

§ 35. **The Law Lords.**—By the Appellate Jurisdiction Acts of 1876 and 1913 six Lords of Appeal in Ordinary have been added to the Lords. The persons chosen must have certain legal qualifications; they are appointed by letters patent and they have the rank of a baron for life. Like all other judges they hold office during good behaviour and may be removed on an address by both Houses of Parliament. Since 1887 they retain their right to a seat in the House after resignation of their office.

The Lords of Appeal in Ordinary and the bishops are the only members of the House of Lords who do not hold hereditary peerages. In 1856 a patent was issued to Sir James Parke, creating him Baron Wensleydale "for and during the term of his natural life," and giving him the right to a writ of summons. The House of Lords objected to the summons of a life peer, and ultimately a fresh patent was issued making the barony in question hereditary as in ordinary cases. This case decided therefore that the King cannot create a life peerage which carries

with it the right to a seat in the House of Lords. The object aimed at by this creation has, however, been achieved by the Appellate Jurisdiction Act.

§ 36. **Disqualifications.**—Women, infants, and aliens cannot sit in the House of Lords. Bankruptcy and conviction for treason or felony have the same effect as in the case of the House of Commons. A peer can also be disqualified from ever sitting again by sentence of the House when sitting as a court of justice. No peer may take his seat until he has taken the parliamentary oath, which is the same as in the House of Commons, or made the alternative declaration. As has been already mentioned, only certain members of the Episcopate and certain Scottish and Irish peers are entitled to a seat, and life peerages (other than those of the Lords of Appeal in Ordinary) do not carry with them the right to a summons.

CHAPTER V.

THE LEGISLATIVE POWER.

§ 37. **Legislation and Taxation.**—Legislation is the process by which laws are made. A law is a rule or set of rules declared by the sovereign power in the State which all persons belonging to that State or within its borders are commanded to observe. Taxation is a particular form of legislation. It consists in a command to pay certain monies wherewith the business of the State may be carried on. At the present time nobody can be forced to pay any taxes unless it can be shown that such taxes are imposed on him by Act of Parliament. An Act imposing taxes has to be passed by the two Houses and must receive the assent of the King just like any other Act. In any yearly volume of statutes, Acts imposing taxation and Acts relating to other subjects, such as parish councils or merchant seamen, are found without any distinction being made between them. But this was not always so. Parliament first acquired control over taxation and then used this control as a lever to acquire control over legislation. This chapter will be devoted to tracing the methods by which this control was obtained and, when obtained, guarded against any competing claim.

§ 38. **Early Forms of Legislation.**—Before the Norman Conquest all laws were made by the King with the counsel and consent of the Witan, and the latter body was

always consulted with regard to any extraordinary taxation. After the Norman Conquest the respective powers of the King and his Council remained outwardly the same as before, but owing to the introduction of the feudal tenure of land and the consequent right of the King to demand feudal dues from his tenants the power over taxation largely passed into his hands. The Great Council which succeeded the older Witan, was, however, consulted about taxes other than these feudal dues; but the first successful opposition to taxation appears to have occurred in 1198, when a demand which had been made by the King was withdrawn and the Justiciar, who was the King's representative, resigned. The first recorded opposition to the King in respect of taxation was by Becket in 1163.

Before 1188 all direct taxes had been levied on the land, but the Saladin tithe of that year was imposed on movables. The amount was determined in the various parishes by the oaths of representative inhabitants. This method was also applied to determine the amount of taxation on land. The introduction of this principle of representation in assessing taxes laid the foundation of the system of taxation at the present day by which all taxes are voted by the representatives of the people. The people were thus being gradually educated up to the idea that they, not the King, were the proper persons to determine the amount of their taxation.

With regard to legislation, there was but little in the period from the Norman conquest to Magna Carta. What there was took the form of declarations of existing law which ought to be observed rather than of amendments to that law. These declarations at first were issued as charters by the various kings with the assent of the barons. An example of this is the Charter of Liberties issued by Henry I. in 1100, which was the sole legislative

act of his reign. A somewhat later form of legislation is the "Assize." Assizes were used to proclaim amendments in judicial procedure and were of a more or less temporary character. They were drawn up by the King with the advice and consent of his national council. Instances of this form of legislation are to be found in the Assize of Clarendon, 1166, and the Assize of Northampton, 1176.

§ 39. **Magna Carta** has been described as one of the three most important documents in our constitutional history, the others being the Petition of Right and the Bill of Rights. We have already seen that it laid down the method of summoning the national council. But besides this, it declared that without the consent of that council no scutage or aid should be levied except the three usual aids to which the King was entitled as feudal lord. The importance of this clause lies in the fact that it was a deliberate declaration by the King that he had no right to tax the people arbitrarily. The declaration certainly did not include the towns, other than London, but these had yet to establish their footing in the national assembly. In theory the council had always had the right to a voice in taxation, and as a matter of fact it had frequently been consulted by the various monarchs when they needed money. But these clauses of Magna Carta for the first time lay down definitely that taxation requires the consent of those who are to be taxed. The Great Charter contains nothing directly relating to the right or method of legislation, but, by defining the nature of the national assembly, which hitherto had always had some part in legislation, and by placing in the hands of that assembly the control over taxation, it exerted great influence on the ultimate history of legislation.

§ 40. **From Magna Carta to 1295.**—This period saw the gradual development of the national council into the

Model Parliament, containing practically the same elements as the Parliament of the present day. The rights which the assembly had were also confirmed and increased. The minority of Henry III. gave it considerable opportunity of asserting its position. Taxes asked for by the King were frequently refused, and when granted, the methods of collection and assessment were definitely laid down. For some time it was the practice for the King's ministers to negotiate separately with the various classes of the community as to what grant of taxation they would make. With the organisation of a national Parliament, containing representatives of the whole community, under Edward I. the need for these separate negotiations greatly diminished; and although subsequently the King tried on occasion to procure grants from or levy impositions on particular sections of the nation out of Parliament, his right to do this was strenuously denied by the national assembly and the practice gradually ceased. Even in Parliament, however, the various "estates," or groups, still made their grants separately and for separate amounts.

Parliament had acquired as yet but little control over legislation. The practice of petitioning the King to remedy grievances had begun, and so had that of making a grant rest upon the redress of grievances; the barons had used both under Henry III., but neither developed very far until the fourteenth century. Although legislation was now made by the King with the assent of Parliament, the assent was but formal, and that of the elected representatives was not regarded as strictly necessary. The famous statute of *Quia Emptores* in 1290 was passed by Parliament before the representative members arrived.

§ 41. Taxation from 1295 to 1485.—The demand was persistently put forward that "the King should live of his own." But the income which he derived from feudal sources

proved insufficient, and he was forced to apply to Parliament to make up the deficiency in revenue. It is to this fact that Parliament owes its present powers and position.

In 1297 the Confirmatio Cartarum was extorted from Edward I. This confirmed Magna Carta and provided that taxation should be made only with the common consent and for the common benefit. It did not actually state that tallages, which were taxes on the towns, were included in the taxes not to be levied without common consent, and accordingly Edward I. imposed one in 1304. Subsequent tallages were resisted, and the right was expressly abolished in 1340. Another exception from the Charter of 1297 was the right to exact customs on wool and other articles. New customs were introduced and aroused great opposition. The customs were, however, eventually regulated and became part of the ordinary revenue. From the latter half of the fourteenth century the power of Parliament over indirect taxation has been recognised. Its control over direct taxation had already been obtained, and it may therefore be stated that the exclusive right of Parliament to impose taxation had become one of the rules of the Constitution.

§ 42. **Statutes and Ordinances.**—The control of Parliament over legislation was not acquired so soon or so easily as the control over taxation, but the latter eventually led to the former. In 1309 a subsidy was voted on condition that the King granted redress on certain points laid down in eleven articles. In 1322 an Act was passed which shows a considerable advance on the declaration of Edward I. that that which touches all must be approved by all. This statute declared that all the concerns of the realm "shall be treated, accorded, and established in parliaments by our lord the king and by the consent of the prelates, earls, and barons, and the commonalty of the realm."

But even this could not be said to be anything more than a declaration. It had yet to be converted into a fact. Side by side with the "Statute" enacted by the King, at the request of the Commons and with the assent of the Lords, was the "Ordinance" issued by the King on the advice of his council. The main distinction between the two forms of legislation was that the statute was a permanent legislative act, while the ordinance was really an executive act of a temporary character. The functions of the two overlapped, and as Parliament's control over the form and contents of statutes grew stronger, the King endeavoured to counteract this by legislating by way of ordinances, which were free from the control of Parliament. Thus the Ordinance of the Staple was issued in 1353 and the Commons immediately protested, while in 1390 they petitioned that no ordinance might be made contrary to the law of the land. During the fifteenth century legislation by ordinance disappeared, but the right of the King to legislate independently of Parliament, by virtue of his prerogative or royal power alone, was maintained and became a fruitful source of strife in the time of the Stuarts.

§ 43. **The Initiation of Legislation.**—The ordinance was not the only difficulty against which the Commons had to fight in obtaining control over legislation. At first all legislation in Parliament was initiated by the King. Gradually the Commons formed the practice of petitioning for the redress of grievances and making their grant of supplies depend upon a favourable answer. Even then, however, they were not sure of securing the desired end. They had at first no hand in drawing up the statutes which were founded on their petitions. Accordingly it sometimes happened that a statute did not contain all that they had asked for, or that, if it did, it was so qualified with conditions

as to make the proposed legislation useless. It also might happen that there was so much delay in drawing up the statute that the matter was put on one side and the petition forgotten. This last grievance was remedied by putting off the grant of supplies until the last day of the session, thus compelling the King to issue his statutes before he could get the money he required. This device was first used in 1339. A way to compel correspondence between the petition and the statute based on it was found in the reign of Henry VI. The petition was framed in the form of a statute, and a request was added that its form should not be altered. When this had become the recognised usage the power of the Crown over legislation proposed by Parliament was confined to the right of veto. The Crown and the Parliament had changed places, the executive and the legislature were clearly distinguished, and the foundation of the sovereignty of Parliament had been laid. The gradually increasing influence of the Commons is also shown by the change in the enacting part of the statute. At first the phrase used is "at the request of the Commons"; but this gives place in the reign of Henry VI. to "by the authority of Parliament," and after that reign the former phrase is never used.

§ 44. **Proclamations.**—The ordinance, as has been already pointed out, was a declaration issued by the King in Council of a more or less temporary character and having special reference to executive or administrative needs. This had gone out of use in the fifteenth century, but was revived as the "Proclamation" under the Tudors and Stuarts. The ordinance had been due to the confusion between the executive and the legislature and to the hitherto ill-defined powers of the latter, but the proclamation was a direct claim by the Crown to a legislative authority independent of Parliament. During the Tudor reigns the nation as a

whole recognised the danger of the time and the necessity for a strong central executive authority. And so the Parliament, while anything but servile, was the willing agent of the monarchy, and by that very willingness was able to acquire powers and create precedents whose full force and importance were only seen in later years.

In 1539 an Act gave the force of law to the proclamations of the King issued with the consent of his council. This practically resigned the legislative powers of the Parliament into the hands of the King, but at the same time it was a recognition of the fact that the eventual law-making power was in the Parliament and not in the King. This Act was repealed in the reign of Edward VI., but proclamations still continued to be issued, and in the time of Elizabeth were specially directed towards creating a censorship of the press. In the reign of Mary the judges had laid down that no new law could be made by proclamation, but it was not until 1610 that the position was clearly defined. The judges were then asked for their opinion, and laid down that the King could create no new offence and that his prerogative was only what the law allowed him; but that the King might by proclamation warn his subjects against offences and that the neglect of such warning would aggravate the offence. Further, that no new jurisdiction could be given to the Court of Star Chamber.

It was in this latter court that offences against proclamations were punished, and on its abolition in 1641 the illegal use of proclamations as a means of legislating without parliamentary sanction ceased. At the present day all proclamations derive their ultimate authority from Parliament, and if any emergency arose in which for the good of the State it was necessary to issue some proclamation, the Ministers authorising that issue would have

to obtain the subsequent passing of an Act of Indemnity to save them from the consequences of their illegal action. It should be noted, however, that the Crown can still validly issue proclamations, without the consent of Parliament, for the performance of acts which are purely executive, such as the making of war or peace

§ 45. **The Dispensing Power** consisted in the right of the Crown to exempt individuals from the operation of particular laws. It is undoubted that some power of this kind did reside in the King, but the uncertainty as to its extent led to constant struggles to restrict it within reasonable bounds and ultimately to its abolition. At first this power was necessary to remedy the errors in ill-drawn laws and the lack of regular meetings of the legislative assembly, but it was greatly abused in the fourteenth century, and petitions of 1347 and 1351 presented by the Commons show that large numbers of wrong-doers had been pardoned by its exercise. Various attempts at curbing it were made, but without much success, and during the reigns of the Tudors and the Stuarts it flourished strongly. In 1686 James II. obtained a verdict from a packed court that his exercise of the dispensing power was legal, and, armed with this declaration, he used the power unsparingly. It was largely the misuse of this power and the similar power of suspending laws that led to the Revolution of 1688 and the passing of the Bill of Rights. This enacted that "the pretended power of dispensing with laws or the execution of laws by regal authority as it hath been assumed and exercised of late is illegal." The King cannot, therefore, dispense with any law unless he is given power to do so by the law itself. But the right of the King to pardon offences is not taken away. This is now exercised on the advice of the Home Secretary.

§ 46. **The Suspending Power** was of much wider extent than the dispensing power. It was a claim to suspend the operation of a statute or number of statutes not merely in individual cases, but for the whole realm. In 1391 Parliament gave Richard II. this authority with regard to the Statute of Provisors, but declared that their so doing was not to act as a precedent. Similar authority was given in certain cases to Henry IV., but it was found impossible to confine the exercise of the power within proper limits. In the Stuart reigns it formed a grave cause of struggle between the King and Parliament. The Declaration of Indulgence of 1672 and the similar Declarations of 1687 and 1688 are the most conspicuous instances of its abuse. The last-mentioned Declaration led to the protest of the Seven Bishops, which was followed by their trial for seditious libel. Their acquittal was the signal for the invitation to William of Orange and the prelude to the Revolution. The Bill of Rights enacts "that the pretended power of suspending of laws or the execution of laws by regal authority without consent of Parliament is illegal." No other solution of the struggle was possible if Parliament was to establish its legislative omnipotence.

§ 47. **Illegal Taxation.**—We have already seen that by the end of the fourteenth century Parliament had acquired control over taxation. In the same way that the King endeavoured by means of proclamations to thwart the legislative powers of Parliament, so by means of "Impositions," which were customs duties imposed by the King with the authority of his council, he attempted to free himself from the parliamentary control over taxation. Several instances of impositions occurred during the Tudors, and in Bates' Case (1606) James I. obtained a verdict for the validity of the practice. Four years later, however, the Commons awoke to the constitutional importance of the

matter, and protested against the exaction of these customs. They were finally prohibited by the Long Parliament in 1640.

Charles I. endeavoured also to exact direct taxation under the title of ship money, with which episode the name of Hampden must always be associated. The tax was clearly illegal, although the influence of the King sufficed to obtain a verdict by seven judges against five in favour of its legality. In 1641 the Long Parliament declared ship money illegal and abolished it. Another illegal kind of exaction was made by means of benevolences. These were a sort of forced loan; but all forced loans and benevolences were declared illegal by the Petition of Right. In 1660 the feudal dues were also abolished, and the Crown received in exchange a fixed annual sum. Finally the Bill of Rights declared "that levying money for or to the use of the Crown by pretence of prerogative, without grant of Parliament, for longer time or in other manner than the same is or shall be granted, is illegal." Since then the control of Parliament over the methods of raising the national revenue has been unquestioned.

§ 48. **Indirect Influence and Corruption** were also used by the Crown in its endeavour to control the current of legislation. By 1485 Parliament had theoretically acquired control over both taxation and legislation, but it was not until after the Reform Act of 1832 that it was completely emancipated from the controlling influence of the Crown. The right of summons was in the Crown, and its ministers would know exactly what laws the Sovereign desired to be passed, while the ordinary members, without any party organisation or much knowledge of state affairs, would have little coherence and could make but weak resistance to the royal wishes as put before them by the King's Ministers.

This was the position under the Tudors. These sovereigns also created many new constituencies, having few electors and being, therefore, particularly open to the royal influence. Such influence was also exercised by circulars addressed to the returning officers recommending various individuals or classes of persons for election. The Stuarts substituted for these methods interference with the various parliamentary privileges, and, in the time of Charles II., direct bribery. After the Revolution and down to 1832 corruption was rife. The boroughs were mostly in the hands of a few people, and were bought and sold like so much property. Among the members themselves bribery was carried on in various ways. Some were given offices of profit, others pensions. Government contracts were found for some, while the bestowal of honours and dignities was sufficient to win the votes of others. Systematic payments were also made direct to members, and it was cynically said that every man had his price.

It was by methods such as these that the King and his Ministers obtained a working majority during the eighteenth century. Towards the end of the century, however, it was shown that a party could be formed and exist without the prospect of mutual gain, and although the influence of the French Revolution retarded to some extent the reform movement in England, yet in 1832 the Reform Bill was passed which made it possible for Parliament to shake itself free from the indirect control of the Crown. Since that time the spread of the franchise and the passing of the Ballot Act have aided the growth of parliamentary independence, while the severity of legislation against bribery and corruption and the curtailment of election expenses within certain defined limits are witnesses to the formation of a body of public opinion inimical to all interference with the choice of the electors. And yet the

Crown still has great influence. But it is the influence of advice and wise counsel rather than of underhand interference for the sake of self-interest. No one can read the memoirs of distinguished statesmen of the last century without feeling how great has been the influence of the Sovereign in the guidance of national affairs. The important part played by the Sovereign is also shown very plainly in the published collection of "Letters of Queen Victoria." But the Crown's influence is now always exercised through advice given to Ministers with the single aim of advancing the public weal.

§ 49. **The Right of Veto.**—Apart from the indirect influence which has been dealt with in the preceding paragraph, the last stronghold of the Sovereign in resisting the legislative control of Parliament is to be found in the right of veto. This is the right of the Sovereign to refuse assent to any bill which is passed by Parliament. This right was frankly asserted and vigorously used under Elizabeth, but the Stuarts preferred other methods of thwarting the people's will. William III. exercised his veto on several occasions, but the solitary example (in 1707) afforded by the next reign is the last. The right has never actually been given up and the assent of the King is still necessary to legislation; but there are other methods of making his influence felt, and after the lapse of two centuries it is not likely that the exercise of the right will be revived. Its application to the control of colonial legislation will be dealt with later.

§ 50. **The Clergy and Legislation.**—This chapter would not be complete without some mention of the position of the clergy with regard to ecclesiastical legislation. As early as William I. the rule had been laid down that the assemblage of bishops could enact nothing that had not first been approved by the King. It has already been seen

that although summoned to the national assembly the clergy soon ceased to attend and preferred their own meetings in convocation. Hallam says that "they certainly formed a legislative council in ecclesiastical matters by the advice and consent of which alone, without that of the Commons (I say nothing as to the Lords), Edward III. and Richard II. enacted laws to bind the laity." One such instance is the statute *De Haeretico Comburendo*, passed in 1401. In 1534 an Act was passed placing on record a previous declaration made by the clergy in convocation that they could not make any new canons, *i.e.* ecclesiastical ordinances, without the King's previous permission, and that when made, such canons would only bind the laity with the added assent of the King in Parliament. Henceforth any enactments of convocation bind the clergy only, unless they are subsequently embodied in a statute and passed by Parliament. It was in this way that the Book of Common Prayer was settled in its present form in 1662.

Henry VIII. was declared to be "the only Supreme Head on earth of the Church of England." This Act was repealed in the time of Mary and has never been re-enacted, although a statute of Elizabeth accorded to her the title of Supreme Governor. The present position of the Church may be summed up as follows:—It is part of the national constitution: its liturgy and articles of religion, although framed by itself in convocation, have received parliamentary sanction, and cannot be altered without it. Its courts are part of the judicial system, and administer the law of the Church as part of the law of the land, while Parliament has provided punishments for breach of its doctrines and forms of worship in the case of those who have actually become its members and ministers.

§ 51. The Privileges of Parliament.—Constant struggle has marked the acquisition by Parliament of its control

over taxation, legislation, and the executive. In the course of those struggles its members have acquired various privileges; for it would be of little use to them to possess powers of control unless they were free from all interference in their exercise.

The chief privileges are those of freedom from arrest, freedom of speech, freedom to determine their own procedure, access to the Sovereign and the right to have the most favourable construction put on all their acts.

Freedom from arrest is one of the "ancient and undoubted" privileges of the members of each House. The attempted arrest of the five members by Charles I. in 1642 is perhaps the most notable instance of its violation. The King's conduct in this matter was described by the Commons as "false, scandalous, and illegal." The privilege, however, does not extend to an indictable offence, *i.e.* one triable at assizes or quarter sessions, or to contempt of court. A recent example of this is the case of Mr. Ginnell, who in 1920 was imprisoned for contempt of court in Ireland.

Freedom of speech is another of the "ancient and undoubted privileges" of the Houses. The last occasion on which its exercise was directly impugned was in the reign of Charles I., when Sir John Eliot, Denzil Holles, and Benjamin Valentine were imprisoned for seditious speeches in Parliament. The Bill of Rights provided "that the freedom of speech, and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament." In the eighteenth century the freedom of speech of members was interfered with by dismissal from any office or commission they held. At the present time each House has sole control over the speech of its members. The publication outside the House of fair and accurate reports of speeches made inside is also privileged. Formerly the privilege did not extend even to

Parliamentary papers published by order of the House. This was shown in an action brought against Hansards, the printers of the official reports of Parliament; but an Act of Parliament now protects official Parliamentary papers. Each House can exclude strangers from hearing its debates if it wishes.

Every peer has the right of access to the Sovereign, and the Commons collectively, through their Speaker, also have this right. The Sovereign is bound to put the most favourable construction on all that goes on in the House, and cannot take notice of anything done there until it is officially brought before him. The above privileges are demanded by the Speaker in the House of Lords at the commencement of every Parliament.

There are other recognised privileges which are not demanded by the Speaker. Thus each House has complete control over its own procedure. In the case of any bill, for example, either House could, if it chose, suspend all its standing orders and pass the measure through all its stages in a single night. But it could not do anything directly contrary to the law of the land. Thus it could not authorise its serjeant to behead one of its members. Each House has the power to imprison anyone who commits a breach of its privileges. In the case of the House of Commons this imprisonment can last only until the end of the session, but the House of Lords may imprison for a definite term. Each House has also the power of expelling any member who is unfit to serve, for example a member guilty of a misdemeanour. Formerly, too, the Commons were accustomed to determine disputed elections; but the trial of election petitions was handed over to the Judges by an Act of 1868.

CHAPTER VI.

THE PROCESS OF LEGISLATION.

§ 52. **Classification of Bills.**—Legislation at the present day is effected by statute passed by the two Houses of Parliament and assented to by the Crown. It is true that other bodies have the right of making binding rules, but the authority under which they do so is always derived from Parliament. Before it is passed a statute is called a bill, and as such is introduced into one or other of the two Houses. At first almost all statutes originated in the House of Commons by way of petition, but it gradually became the established rule that, with the exception of money bills, which must be introduced in the Commons, and bills relating to the peerage, which must be introduced in the Lords, all bills may originate in either House. As a matter of fact, the more important Government bills are introduced in the House of Commons.

Bills may be divided into Public and Private bills. Public bills are those that concern the nation as a whole. Private bills are of a local or personal character, and will be dealt with in a later section. Public bills may again be divided into Government bills and those introduced by private members. There is no actual difference between them in form, but Government bills, having the whole weight of the party in power behind them and the privi-

lege, to a certain extent, of priority of treatment, have much more chance of being passed. To ensure full discussion all bills are "read" three times in each House. A reading is a resolution or vote of the House agreeing with the bill.

§ 53. **A Bill in the Commons.**—Any member who desires to introduce a bill in the Commons must first of all give notice of his desire to the House. He then moves that he may have leave to introduce it. This is usually given without debate, but occasionally a long debate is held on the introduction of an important measure. In the case of bills introduced under what is known as the "ten minutes rule" one short speech for and one against the bill are allowed. Occasionally leave is refused. When leave has been obtained the bill may be immediately introduced and read a first time, and a date is named for its second reading. Another method of introducing a bill is for the member to bring his bill up to the table of the House, when the title is read by the Clerk and the bill is considered to have been read a first time.

On the motion for second reading a general discussion of the whole principle of the bill takes place. It cannot be altered at this stage, but the House can either pass or reject the measure or direct that it be read that day six months or at any other time beyond the probable duration of the session, which is equivalent to a rejection; or, again, the bill may be passed with instructions that it shall be altered in Committee in accordance with some general principle. After second reading the bill is referred to one of the Standing Committees of the House unless the House otherwise orders. This does not apply to money bills or bills to confirm provisional orders. Four committees were set up in 1907 to relieve the congestion of business and two were added in 1919. They are called the A, B, C, D, E,

and Scottish committees, and the various bills are distributed among them by the Speaker, government bills having preference in five out of the six. An important measure, however, would usually be considered by a committee of the whole House, and a motion to this effect would be made after its second reading.

In the Committee stage a bill is considered clause by clause and relevant amendments may be made to it. When this has been finished, the bill as altered is reported to the House, and its consideration on this occasion is called the "Report stage." It may now be again amended, or even sent back to the Committee, but usually a motion is made that it be read a third time. On this being carried the bill has completed all the steps necessary for its passage through the House of Commons, and is then sent on to the House of Lords.

§ 54. **A Public Bill in the Lords.**—Procedure in the House of Lords is very similar to that in the House of Commons. On a bill being brought up from the Commons it is read a first time. Within twelve days of this, notice of the second reading must be given, otherwise the bill gets no further. After its third reading, if there are no amendments, the Lords send a message to that effect to the Commons. If, however, amendments have been made, the bill is returned as amended. The Commons then consider the amendments and send the bill back to the Lords with a message stating their agreement or disagreement. If the two Houses could not agree, it was formerly the practice to hold a formal Conference between representative members, but it is now more usual for Committees of each House to draw up a statement of the reasons for their disagreement. If neither House will give way and no compromise can be arranged, the bill may be dealt with in accordance with the provisions of the Parliament Act, 1911

(see § 55). When the two Houses agree it only remains for the Royal assent to be given.

§ 55. **Conflict between the Houses.**—Though, in theory, the two Houses are of co-ordinate authority with regard to legislation, yet, in practice, the House of Commons on account of its representative character has become the more powerful of the two Houses and is the predominant partner in legislation. In the years before 1911 the problem whether the House of Lords ought to oppose the will of the House of Commons as expressed in a bill passed by that assembly had frequently to be considered.

Disagreements between the two Houses were very often settled by a compromise, as was the case with regard to the Reform of the Franchise and the Redistribution of Seats in 1884-5. If no compromise could be arranged, two courses were then available. The Government of the day could advise the King to dissolve Parliament. The dissolution and the consequent election of members to a new Parliament would show which of the Houses more correctly represented the opinion of the people. If, however, there was no doubt that the House of Commons did represent the opinion of the people and the Lords still refused to yield, the only way out of the difficulty was to create a sufficient number of peers to support the bill so that the minority might be changed into a majority. This was actually done in 1711; and the threat of using this power caused the Lords to give up their opposition to the Reform Bill in 1832 and to the Parliament Bill in 1911.

The Parliament Act of 1911 has rendered obsolete these methods of dealing with conflicts between the two Houses. By the provisions of that measure it is enacted that if a money bill is passed by the House of Commons and sent up to the House of Lords at least one month before the end of the session it may become an Act on the Royal as-

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sent being signified, even though it may not be passed without amendment in the House of Lords. In the case of any other public bill (with the exception of a bill containing a provision to extend the duration of Parliament beyond five years) which may have passed the House of Commons in three successive sessions (whether of the same Parliament or not), and having been sent up to the House of Lords at least one month before the end of the session is rejected or unacceptably amended by the House of Lords in each of these sessions, the bill may receive the Royal assent provided that two years have elapsed between the second reading in the first of the three sessions and the third reading in the third. It is now, consequently, an established principle of the constitution that the chief function of the House of Lords is that of acting as a check on rash, hasty or undigested legislation.

Having passed both Houses or having complied with the provisions of the Parliament Act, 1911, the bill is ready for the Royal assent. The Royal assent is given either in person or by commission. The form of assent for ordinary bills is "le roy le veult," for money bills "le roy remercie ses bons sujets, accepte leur benevolence, et ainsi le veulte." Assent is refused by the words "le roy s'avisera." Royal assent has been uniformly granted since 1707, when Queen Anne refused it to the Scotch Militia Bill.

The Crown possesses the prerogative right of dismissing a ministry if there is reason to believe that it has lost the confidence of the electorate. This power was exercised by George III. in 1783-4 and in 1807, and his action was justified by the result of the elections to the new Parliament. The constitutional usage, however, now seems to be that the sovereign should dissolve Parliament only on the advice of the existing responsible minister.

§ 56. **Money Bills** may be defined as those which have for

their object the grant of public money or the imposition of taxes. Procedure on such bills differs from that on ordinary bills. In the first place all such legislation must be founded on resolutions passed by a Committee of the whole House. The revenue and expenditure are settled in the following way. The Ministers of the Crown put forward resolutions stating what money shall be allotted for the national expenditure and how it shall be spent. These Estimates are discussed by the House in what is known as Committee of Supply. Other resolutions are also passed by the House in what is known as Committee of Ways and Means, and these determine whence the money voted in Supply shall be drawn, whether from the permanent taxation which is paid into the Consolidated Fund or from fresh taxation to be imposed. When these various resolutions have been agreed to they are embodied in bills which are passed in the usual way. But before a money bill can become law it has to be passed by the Lords and receive the assent of the King.

Grants of money have always been the peculiar prerogative of the Commons. This was recognised as early as 1407, and again in 1593. In 1671 and 1678 the Commons declared that the Lords had no right of amendment, and thenceforth this has always been acquiesced in. As late as 1904 a Lords' amendment to the Licensing Bill of that year was objected to by the Commons because it conflicted indirectly with this principle. For a long period the Lords had also refrained from rejecting any money bill, but in 1860 they threw out a bill for the repeal of the paper duty, although they had already passed the bills creating the taxes which were to take its place. This bill had only passed the Commons by a narrow majority, but some six weeks later three resolutions were passed by the Commons which affirmed their former rights

as to taxation and stated that the exercise by the Lords of their power of rejecting such bills would be looked upon with "peculiar jealousy."

The rejection by the Lords of the Finance Bill of 1909 led to a struggle between the two Houses, with the result that the Parliament Act 1911 (§ 55) definitely provided that the Lords can neither reject nor delay a money bill.

Another important point with regard to money bills is that the proposal for the grant to be made must come from the Crown through its Ministers. This rule is only a "Convention of the Constitution" and could at any time be altered, but while it is in existence it prevents irresponsible private members from introducing legislation imposing greater burdens on the taxpayers of the country.

§ 57. **Private Bills** arose from the custom of presenting petitions to Parliament to obtain some alteration of the laws in favour of a private individual. At the present day they are of a private, local, or corporate character. Examples of these various classes may be found in Acts to administer a trust estate, to regulate a harbour, or to confer powers on a railway company. They differ from public bills in procedure in certain respects. A private bill commences by petition which must satisfy certain requirements If passed by the examiners it is sent on to the House and read a first time. Even if the special requirements are not complied with, however, this may be condoned and the bill proceed. Between its first and second readings its form is examined, and after the second reading it is considered by a small committee, who hear its promoters and also those who can show that they have a right to object. If passed by the committee it is read a third time. It then goes through the same stages in the other House, and finally becomes law with the assent of the King.

In 1899 a special method of dealing with Scottish private bills was inaugurated. The Secretary for Scotland is empowered to grant Provisional Orders where a private bill would formerly have been necessary. These are then confirmed by an Act of Parliament which on introduction is "deemed to have passed through all its stages up to and including Committee." Provision is made for the necessary examination of the various projects and for the hearing of objections. Important schemes can still be passed like an ordinary private bill. This innovation has considerably decreased the cost of Scottish private bill legislation, and has also relieved Parliament from a good deal of unnecessary work.

§ 58. **Other Methods of Legislation** depend ultimately on statutory authority. One important class of enactments is that of Provisional Orders. These are schemes of a local nature similar to a private bill, which have obtained the sanction of a Government department. They are confirmed by an Act of Parliament in which they are merely mentioned in a schedule. As a general rule they pass without opposition, being accepted on the authority of the Government department.

In other cases power is given to various bodies such as the Government departments, the Charity Commissioners, and the Rule Committee to make rules and regulations. These may acquire binding force immediately they are made in some cases, while in others it is necessary for them to lie on the tables of the Houses of Parliament for a certain time without objection.

Bye-laws form another class of legislative enactments of which the ultimate validity depends on the statutory authority given to their authors. All these forms of legislation must keep within the powers under which they are enacted.

§ 59. **General Procedure.**—It must not be thought that the sole function of Parliament is to pass bills. It also controls the Executive, and expresses its opinion on various questions of administration in the form of motions. If it is dissatisfied with the conduct of any Minister, it may vote to reduce his salary by some nominal amount to show its displeasure. By means of questions to Ministers every member has a right to inquire into all the details of the administration of the Empire, and thus to ventilate any grievance that may arise. This power is exercised to a considerable extent, and is really one of the chief means by which the growing power of the Executive is kept in check. It is also utilised by Ministers themselves when they wish to make some official pronouncement. This is done by arranging with some member to ask a question to which the desired statement may be made as an answer. Previous notice must be given of all questions, and Ministers may refuse to answer in the interests of the State.

The order of business in the House of Commons on an ordinary day is (1) Private business, *e.g.* private bills. (2) The presentment of petitions. (3) Questions. (4) Matters taken at the commencement of public business, *e.g.* the introduction of new members. (5) Orders of the Day and Notices of Motion. An Order of the Day is some matter which the House has ordered to be considered on a particular day, *e.g.* a reading of a bill. The Government determines what shall be the business for the day, but on Fridays bills introduced by private members have priority over Government business. Notices of motion also have priority over Government business on Tuesdays and Wednesdays after 8.15. But these arrangements are subject to interference by the Government and rarely obtain after Easter or Whitsuntide. The House sits from 2.45 p.m. until 11.30 p.m., no opposed business being taken after

11 p.m.; but on Fridays the hours are from noon to 5.30 p.m. The observance of these times may be suspended on any occasion by resolution of the House and this may give rise to an "all-night sitting." Forty members constitute a quorum, but this is not necessary unless some member calls attention to the fact that there are not forty members present, when the House may be "counted out."

PART III.

THE EXECUTIVE.

CHAPTER VII.

THE GROWTH OF THE EXECUTIVE.

§ 60. **The Nature of the Executive.**—The functions of government are not exhausted with the mere passing of laws. Those laws have to be carried out and enforced. The duty of doing this falls upon the Executive. It also has to determine the conduct of the various interests of the State, its relations with foreign countries and the colonies, the magnitude of its defensive forces, the amount of its expenditure and how the revenue necessary to meet it shall be raised, and generally its policy with regard to all the questions of the day.

In the beginning of our history the King personally took part in all branches of the government. Now he does no administrative act by himself, but everything is done through his responsible Ministers. There has never been a time, however, when his action has not been controlled to some extent by a council, and the history of the Executive is best shown by tracing the history of that council, and with it the gradual limitation of the King's power or prerogative and the gradual acquisition of control by the

Parliament. The tendency of the council in its various forms to increase gradually in size and then for an inner committee to develop from it should be carefully noted.

§ 61. **Saxon Administration.**—Before the Norman Conquest the administrative powers of the King were not defined. Their extent depended on his character and his ability. In theory, "the work of the Witena-gemot was at once administrative, legislative, and judicial; laws were promulgated with its counsel and consent; taxation, when required, was raised by its authority; it shared in the decisions of high questions of State, such as the declaration of war and the conclusion of peace; it witnessed grants of land and acted as the Supreme Court of Justice." Though these powers were extensive, yet it was only through the will of the King that the decisions of the Witena-gemot could become effective.

§ 62. **The Effects of Feudalism.**—After the Norman Conquest the power of the King tended to increase. This was due to several causes, not least of which was the strong and energetic character of the occupants of the throne. The introduction of the feudal system made the Norman Kings the supreme landowners of the kingdom, while the oath of fealty to the King which all landowners had to take, whether holding directly from the King or not, brought the subjects into a much closer and more subservient relation to their monarch than had been the case in Saxon times. Moreover, the fact that his subjects owed allegiance primarily to him and not to the lords of whom they held their lands prevented those lords from obtaining the same independent position in administration which they had acquired in Normandy. Again, while the King always had to rely to some extent on national taxation, yet the increase in wealth which he obtained from the feudal dues made him more independent of the National Council.

This independence was further strengthened by the King's right to call upon his subjects for military service. All these various causes united, therefore, to make the Norman much more powerful than the Saxon King. All the branches of the administration were completely subject to the royal power, and the King could do whatever he felt himself strong enough to do.

§ 63. **The Curia Regis.**—It has been already pointed out that the Magnum (or Commune) Concilium superseded the Witan. This new body usually met three times a year —at Christmas, Easter and Whitsuntide—when it considered the King's legislative and financial proposals and decided appeals which were brought before it. But administrative acts could not wait to be considered at one of these meetings: frequently a decision had to be made at once. And so a permanent committee of the Great Council was evolved which was always near by for the King to consult and which took off his hands a good many of the less important details of government. This committee was called the Curia Regis. It hardly had an official position, and its members were rather personal advisers of the King chosen by him at his pleasure, than persons having a permanent right to attend. This council was usually composed of the officials of the royal household, such as the steward and marshal, whose positions tended to become hereditary, and also certain other officials who were purely royal nominees. The most important of the latter were the Justiciar, the Chancellor, and the Treasurer.

The Justiciar was the King's chief executive officer and presided over all legal business. When the King was abroad the Justiciar acted as his representative. By the reign of Edward I., however, this official had developed into the Lord Chief Justice, who was solely concerned with

the administration of the law. The Chancellor was originally a private secretary of the King, and had charge of his correspondence. As this increased in bulk the authority of the Chancellor over it increased also until he determined its contents. He displaced the Justiciar as chief executive officer in the thirteenth century. By the seventeenth century his duties had become mainly legal, but his appointment is now made on political grounds, and he resigns office with the Ministry of which he is a member. The Treasurer, as his name implies, was mostly concerned with the royal revenue.

From this Curia Regis various permanent bodies gradually broke off for the purposes of revenue and justice. One of these bodies was also called Curia Regis, a name which is also sometimes applied to the Great Council out of which the Curia Regis proper had sprung. The history and powers of these offshoots of the Curia Regis will be further considered in a later chapter,

§ 64. **The King's Council until 1295.**—Until the Exchequer and the various common law courts had become definitely separated from the Curia Regis the same body of advisers had been concerned with all the various classes of business it conducted. Up to that time its functions had not been differentiated. But when the fiscal and judicial functions had been removed, the consultative and deliberative remained, and the assembly became the King's Council, following his person, but still with ill-defined constitution and powers. It is not until the reign of Henry III. that one can be at all sure as to the exact powers which it possessed. The minority of that King and his consequent inability to carry on the administration of the country necessitated the doing of that work by the Council. Accordingly its importance greatly increased. Its composition varied from time to time, but

the officers of State and of the household, besides other councillors, the judges, and certain bishops and barons were always of its number. It acted in the King's name and was permanently concerned in every part of the administration. It differed in composition from the Great or Common Council of the realm which was now gradually developing into the Parliament, some persons being common to the two Councils, while others belonged to one or the other alone. Moreover its functions were administrative and executive rather than fiscal or legislative.

After Henry III.'s minority the Council still continued in existence and was now a check on the King's power rather than a medium through which he might act. The councillors had become guides. Its importance is shown by the elaborate regulations laid down by the Provisions of Oxford for its choice. The councillors had to take an oath to advise faithfully. This oath gradually grew in extent and was intended as a kind of check. Meanwhile the barons endeavoured to control the appointment of the King's Ministers and hence the administration; indeed they tried to turn the Council into a committee of themselves.

§ 65. **From Edward I. to Richard II.**—Under Edward I. the Council assumed a recognised position of great importance, and became more definitely organised. Its powers were very large, being practically co-extensive with those of the King, who in all administrative matters acted through it. It was essentially a royal body, being composed of those persons whom the King chose to advise and help him. As yet, however, it was not a separate, well-defined body; it was intimately connected both with the law courts, which had sprung from the Curia Regis, and with Parliament, which under Edward I. was in form a specially constituted meeting of the King's Council or

Court. There was no clear distinction between Executive, Legislature and Judiciary; in the Council as in Parliament the King would legislate and take advice on matters of administration and policy, and the Council exercised wide judicial functions.

In the fourteenth century the King's Council acquired a much more distinct character, and gradually separated from the law courts and from Parliament; and as the Council became more distinct, Parliament became jealous of its powers and activities. It has already been pointed out that Parliament acquired, nominally at least, the sole power over taxation and legislation. It remains to be seen how Parliament acquired control over the Executive by securing that its approval should be necessary for the appointment of the King's Ministers.

Under Edward II. the barons in Parliament renewed their earlier efforts to control the Council and even to make it representative of themselves. They forced the King to dismiss his unpopular favourites and ministers, Gaveston and the two Despensers. Various schemes for reform of the administration and of abuses were formulated by the barons, and in 1310 they set up the committee of twenty-one Lords Ordainers to check and control the King. This essentially baronial body issued ordinances aiming at a strict control over royal finance and administration, and providing that the great offices of State should be filled up with the counsel and consent of the barons. For most of the rest of the reign appointments to the Council were forced on the King, and in 1327 he was deposed on the charge of incompetence and negligence.

The reign of Edward III. was one of great constitutional development, and the Commons, now becoming organised as a separate House, began to claim the power to call officers of state to account for their acts and policy. As

yet, however, Parliament had little real power of checking the King or enforcing any concessions he made. The King's financial necessities arising out of the war with France might make it desirable for him to consult Parliament as to the conduct of the war, to listen to petitions against abuses and promise to reform them, to allow the royal accounts to be supervised by Parliament, and so forth, but the national assembly could do little more than protest and obstruct. The Government time and time again eluded parliamentary control by levying aids and customs without its consent, while the Council issued ordinances and exercised wide judicial powers in spite of continuous parliamentary petitions against it.

§ 66. **Impeachment.**—In 1376 occurs the first instance of impeachment. An impeachment is an accusation brought by the Commons against some individual who is alleged to have acted contrary to the interests of the State. The accused is tried by the Lords, who act as judges, but they cannot give judgment unless the Commons demand it. This allows the Commons an indirect power of pardoning after having made their protest against maladministration. The chief use of impeachment has been as a check on the action of the King's Ministers. The most important cases were those of Bacon 1621, Middlesex 1624, Buckingham 1626, Strafford and Laud 1640, Clarendon 1667, Danby 1678, and Warren Hastings 1788. This method of controlling the Executive has not now been used for over a hundred years, and, with the present system of Cabinet responsibility to Parliament, is not likely to be used in the future. However, there is nothing to prevent its being employed if necessity should arise. In 1376 Lords Latimer and Neville, the chamberlain and steward, besides several commoners, were impeached for extortion. They were found guilty and sentenced.

§ 67. **Richard II. to the Tudors.**—During the minority of Richard II. the Council was under the control of the Parliament, as the latter body chose the principal Ministers. The executive powers of the Council at the same time became of greater importance owing to the impossibility of the King taking part in administration. In 1385 the King refused to name his intended Ministers to the Commons, but in the next year his chancellor and adviser, Michael de la Pole, was impeached and convicted. The impeachment was solely for political purposes, the object being to ensure his removal.

For some time after this Richard was on amicable terms with the Parliament, but the despotic nature of his rule during the last two years of his reign caused his deposition, and once again showed that the barons in Parliament were too strong for the King.

The years which elapsed between the deposition of Richard II. and the commencement of the Wars of the Roses comprise a period of constitutional kingship. Parliament now enforced the rights which it had claimed from previous sovereigns. Henry IV. endeavoured to adjust the relations between the Executive and the Legislature, and in consequence the Council and Parliament worked together harmoniously. In 1404, 1406 and 1410 fresh councils were nominated at the request of the Parliament, and this appointment of councillors at the wish of Parliament continued for some time longer.

During the minority of Henry VI. the Council attained its maximum power. Its work in all branches of the administration was very great. It was composed mainly of lords, and its power is an index of the power of the nobility at the time. On certain occasions Great Councils were summoned to assist the Privy Council, as it had now begun to be called, and these show the consultative func-

tions which the House of Lords had retained from earlier days. In 1437 Henry VI. undertook the duties of government personally and a change may be noticed. The Council ceased to be subordinate to Parliament, and, indeed, gradually tended to control the latter body. During the Wars of the Roses a large number of the nobility were killed and their power greatly decreased. At the same time the authority of the Commons, which had shown a premature growth under Henry IV., declined, and the whole government of the kingdom was in disorder. There were long gaps between the meetings of Parliament, and Edward IV., by introducing commoners into the Privy Council for the first time, increased his own power.

§ 68. **The Tudor Monarchy.**—When Henry VII. came to the throne a strong administration was necessary to free the country from the internal disorders created by the late war. During the reigns of his successors the dangers from without and the difficulties of the religious settlement within necessitated a strong hand at the helm. The sixteenth century is therefore one of nearly absolute monarchy. This was disguised under constitutional forms, but both Parliament and Council were subservient to the royal influence. The reason underlying this was, however, that the Tudor sovereigns identified their policy with the interests of the State, and the nation recognised that this was so. The executive government of the country was carried on by the King acting, in the main, through his council. This was not a large body, and its members were nominated by the sovereign. Much was left to the individual members, but the supreme control rested with the monarch.

The sixteenth century is remarkable for great progress in many directions. Not least may the change be noticed in matters of government. Before this period government was

coercive rather than regulative. "It consisted chiefly," as one writer puts it, "in collecting taxes, suppressing rebellions, and maintaining the authority of the common law." But under the Tudors new features of government arose, and new machinery was invented for the administration of the laws, which were largely increasing in number and complexity.

§ 69. **The Secretaries of State** first acquired importance in the Tudor period. Through them and the older officers, such as the Chancellor and Treasurer, Steward and Admiral, the decisions of the Council were carried out. Originally the Secretary was a mere clerk, but in 1539 a second Secretary was appointed and the administrative functions of the post were gradually extended. In 1707, on the union with Scotland, a third Secretary for that country was appointed, but this office was abolished in 1746. In 1794 a Secretary for War was appointed. Subsequently he was entrusted with Colonial business, and this disposition of affairs lasted until 1854, when a separate Secretary was appointed for the latter purpose. In 1858 a Secretary for India was appointed, and in 1918 a Secretary for Air. Each of the six can exercise the power of the others if necessary. From the time of Henry VIII. Anson says "they were the channel through which alone the Crown could be approached in home and foreign affairs, and the medium through which the pleasure of the Crown was expressed." The Secretaries were always members of the Privy Council, and when the guiding functions of that body were usurped by the Cabinet they became the heads of the various departments of government, and as such responsible to the Cabinet, to Parliament, and to the nation for the execution of the administrative business of the country.

§ 70. **The Stuart Period** witnessed the struggle between

the upholders of the theory of divine right—that the King's power was unlimited and above the control of Parliament—and those who maintained that the King's prerogative could be exercised only in accordance with the law. In the reigns of the first two Stuarts the causes of conflict were the efforts of the King to tax without the consent of Parliament, and to pervert the course of justice by influencing the judges and also by making use of the Court of Star Chamber. This court had grown out of the judicial functions of the Privy Council, and was now used to enforce the illegal proclamations of the King. It was abolished by the Long Parliament in 1641. The exercise of the suspending and dispensing powers provided the chief cause of quarrel during the last two Stuart reigns. The struggle ended in the Revolution of 1688-1689, and the final establishment of the authority of Parliament over the Executive.

The Council was still the means of government, and its power tended to become greater until, in 1641, it was shorn of nearly all its functions except those which were political and executive. In the reign of Edward VI. it had been divided into five committees for the better execution of the affairs of State. This division continued to be observed more or less, and in the reign of Charles II. several committees were formed to carry on the various departments of government, all being subject, however, to the full Council. Besides these committees an informal secret committee, which was called the Cabal, was also formed to advise the King in his conduct of the affairs of State. To this political adventurers were admitted and it became of bad repute. Several of its members were impeached, and in 1679 a scheme was formulated for making the Privy Council representative and bringing it more into harmony with Parliament. The old council was dissolved and the

new scheme tried, but the number of councillors was too large and the old conditions soon revived.

During this period Parliament lost to some extent its hold on the King's Ministers owing to the secret nature of the inner committee of the Council. The consequence was that it became necessary to assert control by means of several impeachments. An important point to note is that early in the reign of Charles II. supplies were appropriated to the particular purposes for which they were voted.

The interval of the Commonwealth was one of a strong central administration, but it was premature. The nation as a whole did not wish for it, and shortly after Cromwell's death it expressed its dislike of his strong and autocratic government by its acquiescence in the Restoration.

§ 71. **The Executive since the Revolution.**—The history of English administration since 1688 is mainly concerned with the growth of the Cabinet and its general directing power. This will be considered separately in the next chapter. It will be sufficient here to notice that the Cabinet is really a private meeting of selected Privy Councillors, and thus continues the historical development of the executive power of the Crown in Council. The Privy Council itself at the present day consists of a large number of the most prominent men of the time, but it never meets as a whole, and any business which must be carried out by Order in Council is formally done at a meeting of a few of its members specially convened for the purpose. From its committees, however, have sprung a number of important departments of State. As will be seen in a later chapter the Boards of Trade, Works, and Education, and the Ministry of Agriculture and Fisheries, are all wholly or partially the outcome of its committees.

CHAPTER VIII.

THE CABINET AND THE PARTY SYSTEM.

§ 72. **The Growth of Parties.**—A party may be defined as a body of individuals having similar views on the leading political questions of the day and combined together to further the adoption and maintenance of those views in the conduct of the business of the State. The Puritan members in the time of Elizabeth had common opinions, but we find the first trace of definite parliamentary parties in the Long Parliament when Roundheads and Cavaliers faced one another, being divided on the theory of Divine Right. Before this time circumstances had been against the formation of parties as they are now understood. Parliament met but rarely. There was little opportunity for its members to know one another or to agree on concerted action. There were few alternatives to the Ministers chosen by the Crown, as no others had any official experience. Consequently there was little real opposition unless the whole Parliament was united in defence of its power or privileges.

The Exclusion Bill of 1679 was the cause of the formation of two parties. By that measure it was proposed to exclude the Duke of York (afterwards James II.) from the throne on account of his professed Romanism. Charles II. dissolved Parliament. Many petitions for a new Parliament were then addressed to him, and their authors became known as "Petitioners." Their rivals and opposers were termed "Abhorrers," as abhorring the attempt to coerce

the King. These names, however, quickly gave place to those of "Whigs" and "Tories." "They differed," writes Hallam, "mainly in this: that to a Tory the constitution . . . was an ultimate point . . . from which he thought it almost impossible to swerve; whereas a Whig deemed all forms of government subordinate to the public good, and therefore liable to change when they should cease to promote that object. . . . The principle of the one, in short, was amelioration, of the other conservation." After the Revolution the extreme Tories became Jacobites, but in the main the country and the Parliament was divided into two great parties, although there was not much public enthusiasm for either side. During nearly the whole of the eighteenth century it was possible for the King and his Ministers, by the judicious use of bribery and their influence over rotten boroughs, to secure a parliamentary majority of the complexion desired. But as public interest increased the possibilities of bribery became less. The Reform Act of 1832, the new ideas as to representation which it inaugurated, and the publicity of debate have gradually emancipated the House of Commons from all traces of direct corruption.

§ 73. **Parties of To-day.**—During the nineteenth century the Whigs and Tories gradually developed into Liberals and Conservatives. As the terms came to be generally understood, a Liberal is one who is more or less dissatisfied with existing conditions and desires to see them reformed. A Conservative, on the other hand, desires to retain existing conditions and only to change them when it is clearly proved that the change will be beneficial. In methods of legislation the Liberal Party was inclined to accomplish its aims by sweeping measures, while the Conservative Party endeavoured to effect necessary changes by a process of gradual evolution and so to avoid a violent disruption of existing conditions. In

practice, however, the distinction was by no means so clearly defined as might have been expected.

Besides these two great parties there were, before the War, two other parties or groups, the Irish Nationalist party, consisting of about eighty members and advocating the creation of a separate Parliament and Executive for Ireland, and the Labour party, representing trade unions, co-operative societies and socialist bodies, and advocating a socialistic policy. Socialistic theories vary considerably even on important matters, but the idea underlying them all is the state organisation of individual life and industry for the common good. In this they are opposed by individualism, which aims at leaving to the individual citizen as much freedom of action, social and economic, as is consistent with the national welfare.

Since 1914 party positions have undergone considerable change. During the War a coalition between the Conservatives and a large section of Liberals took place, the rest of the old Liberal party standing aloof. That coalition broke down in the autumn of 1922, and the two branches of the Liberal party have since re-united. Meanwhile the rapidly growing strength of the Labour party has made it a much more important factor in politics, and, by its new constitution of 1918, it has sought to attract to its ranks citizens outside the trade unions and socialist bodies.

After the general election of November 1922 the Labour party became the recognised "Opposition." After that of November 1923, at which no one of the three parties obtained a majority over the other two, it was called upon to form a Government, and is maintained in power largely by the support of the Liberals, though the Conservatives are the largest single party in the House (1924).

Ireland, with the exception of Ulster, has ceased to be represented in the Imperial Parliament.

Another controls gas, water and electric lighting companies, and grants provisional orders and approves of bye-laws for such undertakings. The Department of Industrial Property is constituted out of the old Patent Office, which administered the Patents, Designs, and Trade Marks' Act. Another branch—the Department of Industries and Manufactures—deals with the development of industries, especially in connection with the influence of foreign manufactures abroad, and of alien manufactures at home, upon British production.

The Statistical Department disseminates a large amount of information. The Board of Trade is the collector and publisher of national statistics connected with trade and commerce, and returns of all kinds are digested by the department. The General Economics Department, a new branch of the Board, is intended to keep in touch with the Committee of the Privy Council for Scientific and Industrial Research, with the Imperial Institute, now under the control of the Colonial Office, and the National Physical Laboratory.

Until this department was taken over by the Ministry of Labour, the Board maintained Labour Exchanges and Trade Boards, and had considerable powers with regard to intervention in industrial disputes.

(3) **The Department of Overseas Trade (Development and Intelligence)** is a joint Department of the Foreign Office and Board of Trade, and was formed in 1917. It comprises the former Department of Commercial Intelligence of the Board of Trade and a part of the Foreign Trade Department of the Foreign Office; and it now has control of the Consular and Attaché services. It is represented in Parliament by its own Parliamentary Secretary, who occupies the position both of Additional Under-Secretary of State for Foreign Affairs, and also of Addi-

tional Parliamentary Secretary at the Board of Trade. The Department is assisted by an Advisory Committee of business men.

The Board of Trade Journal is the official publication of the Board and is now the medium of announcement both for the Board in general and the Joint Department of Overseas Trade.

The Board includes a Department of Mines which supervises the conditions of labour, etc., in mines, and also comprises a number of Emergency Departments, which deal with various industrial and commercial matters arising out of the recent war. In 1921 the Board took over the powers and duties of the Ministry of Shipping, which was constituted in 1916 for the purpose of organising and maintaining the supply of shipping in the national interests.

The Finance Department of the Board of Trade administers the funds necessary for the duties above mentioned, and deals with the accounts of the various departments.

§ 88. **The Ministry of Labour** is one of the most important of the new departments of State created since the recent war. For many years the creation of such a Ministry had been advocated by Royal Commissions and social reformers, and the urgency of the industrial problems intensified by war conditions made the step a necessary and popular one. The Ministry was established under the New Ministries and Secretaries Act, 1916. By this Act there were transferred to it the powers and duties of the Board of Trade Employment Department, the Trade Boards' Department, and the Chief Industrial Commissioner's Department. Another department—the Labour Statistics Department of the Board of Trade—was transferred to the Ministry in 1917. In addition there was

relegated to the Minister such other powers and duties of the Board of Trade or of any other department or authority relating to labour and industry, as the King may by Order in Council transfer to him or authorise him to exercise concurrently with, or in consultation with, the department or authority concerned. The transference of powers from other departments is still incomplete, but probably in time the work of the new Ministry will be further extended and consolidated.

The Ministry thus has charge of the Labour Exchanges —since 1916 termed Employment Exchanges—the Trade Boards for "sweated" trades, trade disputes, and Unemployment Insurance. It administers the Trade Boards Acts of 1909 and 1918, and has power to enter workshops and inspect wages sheets. The Labour Statistics Department publishes in the *Labour Gazette* statistics in regard to Trade Unionism, strikes, unemployment, cost of living, etc. The Industrial Relations Department has considerable powers of intervention in industrial disputes.

In the discharge of his duties the Minister is assisted by one Permanent and one Parliamentary Under-Secretary.

§ 89. **The Ministry of Transport**, formed in 1919, is the most recent of the new Ministries, and its powers will undoubtedly be extended when the department is in full working order. At present it is empowered to control the railways, canals, and inland navigation, and can require improvements to be made in docks. It also supervises roads and traffic generally. The Minister is assisted by one Parliamentary Secretary.

§ 90. **The Ministry of Health**, created in 1919, has now superseded the old Local Government Board, which was formed in 1871 to concentrate in one department the general control over matters of public health, relief of the poor and local government. It was composed of the Lord

President of the Council, the Secretaries of State, the Lord Privy Seal, the Chancellor of the Exchequer and a President, but, like the Board of Trade, it never met. Its duties were performed by its President, assisted by parliamentary and permanent secretaries and a large staff. Its authority was one of direction in the relief of the poor and of supervision in other matters. It had a general control over all local authorities; it gave advice when asked, made orders, sanctioned loans, approved bye-laws, appointed inspectors and audited local accounts. It was the central pension authority for old age pensions. It made reports on all private bills dealing with local matters. It administered the Unemployed Workmen Act of 1905, and had control over the grant to relieve unemployment.

Among other duties which fell to its lot may be mentioned the supervision of such matters as vaccination, motor cars, and the inspection of alkali and other chemical works and the management of the census.

Although this Board, when constituted in 1871, was supposed to form the Health department which had been recommended by the Royal Sanitary Commission of 1869, it never fulfilled this expectation, but devoted itself mainly to Poor Law administration, and neglected Public Health. As a result, not only did Public Health administration suffer, but Health functions eventually grew up in other departments, *e.g.* in the Home Office and Board of Education. The new Ministry of Health was formed in order to fix responsibility and to co-ordinate administration. To it were transferred by the Ministry of Health Act, 1919, subject to certain provisos:—

(1) All the powers and duties of the Local Government Board.

(2) All the powers and duties of the Insurance Commissioners and the Welsh Insurance Commissioners.

(3) All the powers of the Board of Education relating to maternity and infant welfare, and to the medical inspection and treatment of children and young persons.

(4) All the powers of the Privy Council and of the Lord President under the Midwives Acts, 1902 and 1918.

(5) Such powers of supervising the administration of Part I. of the Children Act, 1908, as have hitherto been exercised by the Secretary of State.

(6) There may also be transferred to the Minister certain specified powers—particularly the care of sick soldiers (now under the control of the Ministry of Pensions) and the control of lunacy (formerly handled by the Home Office)—and any other powers or duties in England and Wales of any government department which relate to matters affecting, or incidental to, the health of the people.

An important feature of the Ministry is the establishment of Consultative Councils, at present four in number, dealing with the medical and allied services, the working of approved societies, local health administration, and general health questions. The Ministry administers the old age pension provision. A department has been formed to deal with the welfare of the blind. Housing is an important branch of work. The Ministry also possesses powers for the initiation and direction of research.

The Minister is assisted by one Parliamentary Secretary and a large staff of "medical officers." A separate Act established a Board of Health for Scotland, in the Department of the Secretary for Scotland.

§ 91. **The Ministry of Agriculture and Fisheries.**—A Board of Agriculture was created in 1889, and its powers were enlarged in 1903, when it took over the control of fisheries from the Board of Trade and thereafter was known as the Board of Agriculture and Fisheries.

In 1919 a Ministry of Agriculture and Fisheries was substituted for the Board, and the organisation of the Ministry underwent considerable alteration. The business as regards agriculture in England is transacted in three departments, the heads of which, together with the Minister, form the Administrative Council of the Ministry. This Council deals with general questions of policy and co-ordinates the work of the separate departments. The Ministry contains two other branches, the Fisheries and Welsh departments respectively; and the heads of these attend the Council when matters concerning their departments are under discussion.

In 1919 there were established three new bodies to assist the Ministry in its work—a Council of Agriculture for England, a similar Council for Wales, and an Agricultural Advisory Committee for England and Wales. At the same time it was provided that every County Council (with the exception of the London County Council) must, and every County Borough may, appoint a County Agricultural Committee. These committees may consist in part of persons who are not members of the local Council, and to them are delegated extensive powers in regard to agriculture, *e.g.* the powers of the local Council under the Diseases of Animals Acts, Land Drainage Act, and Small Holdings and Allotments Act. Agricultural education may also be referred to these committees by the Ministry on the application of the Council.

The Ministry has a large variety of powers and duties. It administers such Acts as the Diseases of Animals Acts, and Destructive Insects Acts. It supervises regulations with regard to fertilisers and feeding stuffs, and appoints an agricultural analyst. It collects and digests agricultural statistics, and can promote agriculture, horticulture and forestry in various ways. With regard to the land, it

administers the Small Holdings and Allotments Acts, and controls the enfranchisement of copyholds, the enclosure of commons, and the commutation of tithe rent charge. It also controls the administration of the Ordnance Survey and of Kew Gardens.

§ 92. **The Board of Education** was formed in 1899. It is composed of the Lord President of the Council, the Secretaries of State, the First Lord of the Treasury, the Chancellor of the Exchequer, and a President. Like the other Boards it does not meet. Its administration is presided over by its President, who is responsible to Parliament; he is assisted by a Parliamentary and a Permanent Secretary. Its principal duty consists in the control of elementary education in England and Wales. It issues a code of regulations for elementary schools, defining the subjects of instruction. It inspects schools and training colleges, examines teachers and determines disputes as to the necessity for schools. It has taken over the control of the Department of Science and Art, and supervises various museums in London including the Victoria and Albert Museum and the Patent Museum.

The President is assisted by a Consultative Committee of eighteen members appointed for six years, of whom at least two-thirds must be persons qualified to represent the views of various educational bodies.

A Medical Department was set up in 1907 to supervise the medical inspection of children, in accordance with the Education (Administrative Provisions) Act of that year (§ 223). The Welsh Department administers the Education Acts which apply to Wales.

Besides its duties with regard to elementary education, which will be more fully considered in the chapter on that subject, the Board of Education was in 1903 entrusted with duties in respect of secondary education. A strong

body of secondary school inspectors has been appointed to inspect grant-aided schools and other secondary schools which seek recognition for efficiency.

The Board now includes a Universities' Branch, dealing with the inspection of Universities and the inspection and examination of Training Colleges.

§ 93. **The First Commissioner of Works** is the Parliamentary head of another Board called the Board of Works and Public Buildings. Its other members are the Secretaries of State and the President of the Board of Trade. It has control over the royal palaces and parks, and such of the Government works and public buildings as are not under the control of any other department.

§ 94. **The Postmaster-General** is responsible for the administration of the Post Office. The position is a political one and its occupant is frequently in the Cabinet. It dates back to 1710, although some postal arrangements existed as early as the sixteenth century. The principal date in Post Office history is 1837, when the rights and duties of this department were defined by statute.

The work of the Postmaster-General is different from that of his colleagues. They have to direct branches of the public administration or supervise matters of public concern, but he has to manage what is virtually a huge business. This business is a State monopoly, and although it is primarily administered for the public convenience it is intended to produce a profit.

As manager of the Post Office the Postmaster-General has not a very wide discretion, and for any important changes in policy must obtain statutory sanction. Less important changes, if they affect the amount of revenue which will be produced, have to be authorised by the Treasury. But in 1906 an Act was necessary to give the

Treasury power to sanction the carriage of literature for the blind at a special rate.

In normal times the Postmaster-General is the largest government employer. The work of the Post Office is extensive, varied, and increasing. It has the sole right to carry letters and to transmit telegrams. It manages (since January 1912) the business formerly conducted by the National Telephone Company. It delivers letters, newspapers, and parcels within the British Isles on the prepayment of certain charges which are imposed by Parliament from time to time. As a result of an Imperial Postal Conference held in London in 1897 an Imperial penny post was established with India and the Colonies. This was later extended to the United States, but since the war the rate has been increased.

Contributions in respect of the National Insurance Acts (1911, 1918, 1919, 1920, etc.) are effected by means of stamps purchased at the Post Office.

One great department of the Post Office is the Savings Bank. The issue, payment, and transmission of money and postal orders is another side of the banking business of the Post Office. It also pays old age pensions and naval and military separate allowances and pensions.

Besides acting as banker the Post Office acts too as stockbroker for the purchase of Government stock and as an insurance company for the purchase of annuities and for life insurance.

§ 95. **The Lord High Chancellor of Great Britain** is one of the most important members of the Cabinet. The history of his office will be found in an earlier chapter (§ 63). At the present day he is the guardian of the Great Seal and is appointed by its delivery to him. He is responsible for all documents to which it is attached. He issues writs for the election of members to a new Parlia-

ment, and is also one of the Commissioners for giving the royal assent to bills or opening or proroguing Parliament when this is not done by the King in person. He is the chairman or speaker of the House of Lords, and is in practice always a member of that body, although this is not necessary.

He is the head of the Judiciary of the kingdom, and appoints the judges of the High Court and the County Courts. He also appoints justices of the peace. Among the many other judicial appointments made by him may be mentioned that of the Public Trustee. He is himself the head of the Chancery Division of the High Court, and can sit as a judge in that court, the Court of Appeal and the House of Lords, although he usually confines his judicial activities to the last-named assembly. He is the general guardian of all infants and lunatics, is a visitor of all hospitals and colleges where there is a royal foundation and exercises a considerable amount of ecclesiastical patronage. By the Act of 1829 a Roman Catholic cannot hold the office of Lord High Chancellor.

§ 96. **The Law Officers of the Crown** are the Attorney-General and the Solicitor-General. In spite of their names both are barristers; they rank as the official heads of the bar during their term of office. The bar is the term used to describe the whole body of barristers, just as "the bench" refers to the judges. The Attorney-General is the principal law officer, and the Solicitor-General occupies a subsidiary position, but both have much the same duties to perform. They are not allowed to engage in private practice, but may in addition to their official salaries charge fees for all work done. They represent the Crown in the courts of law and conduct prosecutions and civil suits in which the Crown is interested, such as actions to recover revenue. In the more important cases alone

do they take part personally. In the others they are represented by their nominees.

A further and, perhaps, more important duty of these officers is to advise the Government generally and the various departments in particular as to the legality of any proposed course of action.

They are invariably members of the House of Commons, but they also receive a writ of attendance to the House of Lords. It is in accordance with this writ that the Attorney-General attends when the House is sitting as a committee of privileges in peerage cases in order to be the mouthpiece of the Crown. Like the judges, to whom this writ is also sent, he has, however, no right to a seat in the House of Lords: his only function is to give advice.

Their duties only extend to England and Wales, and similar officers have till now been appointed for Ireland. In Scotland their place is taken by the Lord Advocate and the Solicitor-General for Scotland, although the former of these officers has various other duties.

§ 97. **Other Cabinet Ministers,** as has been already mentioned, are the Chancellor of the Duchy of Lancaster, the Lord President of the Council, and the Lord Privy Seal.

The first of these manages the estates and revenues of the Crown within the Duchy of Lancaster. He appoints the county court judges, borough magistrates and justices of the peace for Lancashire, and has a certain amount of ecclesiastical preferment in his gift.

The Lord President of the Council presides over the Privy Council. The secretarial staff of that body, for whom he is technically responsible, are concerned with the due publication of all Orders in Council.

The Lord Privy Seal is a very ancient office, but all its duties were abolished in 1884. The post is sometimes given to an active politician to free him for special

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duties, such as those of Leader of the House, but more often it is given to some distinguished statesman who through old age has become unequal to the performance of active administrative duties, the object being to secure to the Cabinet the general benefit of his advice and experience.

A practice grew up during the recent war of appointing a prominent statesman to Cabinet rank without burdening him with even nominal administrative duties. The "War Cabinet" of Mr. Lloyd George usually contained at least two of these "ministers without portfolio," but the practice has since been discontinued.

§ 98. **New Departments** created since the outbreak of war in 1914 included, besides those already mentioned, several of an ephemeral nature, intended to meet merely temporary emergencies, and now disbanded. Examples of these are the Ministries of Blockade, National Service, Munitions, Shipping and Food. The short-lived Ministry of Reconstruction has now been dissolved and its work absorbed by the separate departments concerned. Some of these war-time Ministries exercised very large powers, more especially the Ministry of Munitions, created in 1915, which took over the work and staff of the Master-General of Ordnance. It possessed considerable powers in regard to prohibiting strikes and setting up compulsory arbitration. It regulated conditions of work and profits in controlled establishments. The department was responsible for armaments, ordnance factories, fortification, barrack maintenance, contracts, and so forth. Its former powers have been reabsorbed by the War Office, and the Ministry itself has been dissolved. The powers of the Ministry of Shipping have been transferred to the Board of Trade. A few of the departments created by the exigencies of war still remain, and some of these show every likelihood of being permanent.

Of the latter the **Ministry of Pensions** is by far the largest. It was created in 1916, by an Act of Parliament which transferred to it the powers and duties of the Admiralty, the Chelsea Commissioners and the War Office in respect of the administration of pensions and grants to officers and men, and to their widows, children, and dependants; and to persons in the nursing services of the naval and military forces, except "service" pensions, in-pensions, and pensions or grants out of funds provided exclusively for the purpose of Greenwich hospital. The Minister has power to approve the formation of Local War Pensions' Committees and is assisted by a Special Grants Committee. The Minister is also assisted by two Parliamentary Secretaries, one of whom is also the Financial Secretary.

Mention may also be made of the new **Department of Scientific and Industrial Research**. The Committee of the Privy Council for this purpose was appointed by Order in Council in 1915 to direct, subject to conditions prescribed by the Treasury, the application of any grants made by Parliament for the organisation and development of Scientific and Industrial Research. The Committee consists of the Lord President of the Council, who acts as President of the Committee; the Colonial Secretary, Chancellor of the Exchequer, Secretary for Scotland, Chief Secretary for Ireland, Presidents of the Board of Trade and Education, and five others. At the same time an Advisory Council was appointed, to whom all proposals for research were referred. In 1916 the official members of the Committee of the Privy Council were created a body corporate, to hold and dispose of money and other property for the purposes of the Committee. In the same year a separate Department having its own parliamentary vote was created for the service of the Committee. Since then a number of Research Boards, *e.g.* the Fuel

Research Board, have been created within the Department for the purpose of special investigation. In connection with the Department various Co-Ordinating Research Boards have been established to provide for the interchange of information between the different State technical establishments concerning their particular work, to arrange for the supply of such information, whenever possible, to persons not in the service of the State, and to make arrangements for research to meet the requirements of Government Departments. The Committee has also been entrusted with the control of the Geological Survey and Museum, and has assumed responsibility for the maintenance of the National Physical Laboratory.

§ 99. **Royal Commissions.**—It is noteworthy that many permanent departments of modern executive activity have been the outcome of temporary commissions of enquiry. Originally it was part of the prerogative of the Crown to hold "inquests" for the preservation of law and order. The abuse of this power under the Tudor and Stuart kings led to its curtailment, but the remaining right of enquiry has in the nineteenth century become an important parliamentary method of administration.

For legislation to be effective it is desirable that it should be drafted with full and complete knowledge of the conditions which it is to affect. Accordingly it has become customary to appoint Royal Commissions to enquire into the various social and administrative problems of the time. The commissioners are appointed by the Government of the day. They are usually selected on account of their peculiar fitness for the investigation proposed, and their chairman is invariably a well-known public man. They have powers to summon and examine witnesses. An exhaustive enquiry is made into the particular problem before the commission, and its result is embodied in a report. Frequently, pre-

liminary reports are issued from time to time and the whole work of the commission is summarised in a final report. If there is any disagreement among the commissioners majority and minority reports may be made. These reports usually contain recommendations on which future legislation is based. Indeed, it is due to the fact that a large amount of legislation at the present day is thus founded on a thorough and scientific investigation of the problem to be solved, that the present method of parliamentary legislation is at all tolerable. The reports of these commissions present "an inexhaustible supply of material for the legislator, the administrator and the student of English government in all its branches." Besides these Royal Commissions, Parliament can appoint Select Committees of Inquiry for similar purposes from among its own members, while the various Government departments have the power of appointing Inter-Departmental Commissions.

As has been stated, many of the Government departments have developed in this way. Commissioners have been appointed for a temporary purpose, but have become permanent. Examples of this tendency are to be found in the Commissioners of Poor Law and of Public Health, whose work is now carried on by the Ministry of Health and in the Road Board, now the Roads Department of the Ministry of Transport. The Charity Commissioners and the Public Works Loan Board are examples at the present day of the permanent type of commission.

CHAPTER X.

NATIONAL DEFENCE AND FINANCE.

§ 100. **The Committee of Imperial Defence** was first constituted in 1904. After the temporary changes due to war conditions, it was revived in 1920, and again became responsible for the co-ordination of imperial naval, military and air policy. It is composed of the Prime Minister, who acts as President, the Secretaries of State for Foreign Affairs, War, Air, the Colonies, and India, the Chancellor of the Exchequer, the First Lord of the Admiralty and naval and military experts of high rank, such as the First Sea Lord, the Chief of the Imperial General Staff, and the Chief of the Air Staff. It is an elastic body and the President can summon to its councils persons with special knowledge of the problems to be considered. Its function is to determine general policy with regard to imperial and national defence. Permanent records of its decisions are kept, and continuity is thus secured. The Committee conducts its work through permanent sub-committees.

§ 101. **The Secretary of State for War** is the Minister primarily responsible to Parliament and the Crown for the efficiency and control of the army. The appointment of a separate Secretary of State to deal with the army alone dates from 1854. Although called Secretary for War he has no control or jurisdiction over naval or air matters. When his office was separately constituted in 1854 several

important branches of military administration, *e.g.* the Commissariat Office, the Board of Ordinance, the Army Medical Department, were not under his control; but subsequently these were absorbed into the War Department. In 1870 the direct control of every branch of army administration was vested in the Secretary of State. Before the appointment of a Secretary of State the military control of the army was mainly in the hands of the Commander-in-Chief. In 1895 this office was definitely subordinated to that of the Secretary, and in 1904 abolished; an Army Council was then created, to which were transferred all the powers exercised by the Secretary of State for War and the Commander-in-Chief. The Secretary is the head of the Council, which advises him on all questions as to the efficiency of the army. He draws up and presents the army estimates to Parliament, determines the numbers of which the army shall be composed, and generally is the supreme authority on all matters connected with it.

§ 102. **The Army Council** is composed of the Secretary of State for War, five military members, a civil member, and a finance member. The five military members are responsible to the Secretary of State for War for the general organisation and maintenance of the army. The first of these military members is the Chief of the Imperial General Staff, the second the Adjutant-General, the third the Quarter-Master-General, the fourth the Master-General of the Ordnance, the last the Deputy Chief of the Imperial General Staff. The Parliamentary Under-Secretary of State fills the position of civil member of the Council, and the (Parliamentary) Financial Secretary to the War Office is the finance member. The Secretary of State assigns to the various members the parts of the army organisation for which they are to be responsible.

§ 103. **The Army.**—The Bill of Rights enacted that "the raising or keeping a standing army within the kingdom in time of peace unless it be with consent of Parliament is against law." As, however, a standing army is a necessity for defence Parliament has, since the Bill of Rights, sanctioned the use of a standing army from year to year, and thereby incidentally provided a reason which compels its own summons every year. The annual Army Act determines the number of men, exclusive of those serving in India, of whom the army is to be composed for the year and makes them subject to military law.

The Indian army forms part of the regular army, but is paid for by the Indian government.

Prior to 1907, the military forces of the Crown consisted of (*a*) the regular army, (*b*) the militia, and (*c*) the volunteers, including the yeomanry. In 1907 the whole army system was reorganised, and for the three lines of defence mentioned above were substituted two. The first consisted of the regular army with its reserves and the militia; the second line—the territorial force—absorbed the yeomanry and the volunteers.

§ 104. **The Militia** was the oldest of our military forces and descended from the old English "fyrd." Originally every free man was bound to serve in this force, which, however, was reorganised from time to time. It was enacted in 1757 that each county should provide by ballot for service in the Militia a definite number of its inhabitants between the ages of 18 and 45. This ballot was suspended from 1829, and in 1852 a system of voluntary enlistment was applied to the Militia, which in 1871 was placed under the control of the Secretary for War. By the Territorial Forces Act of 1907 the Militia finally passed into the Special Reserve and was made liable for foreign service.

The Territorial Army, which forms our second line of defence, was created by the Territorial Forces Act of 1907. It, like the army, depends upon voluntary enlistment. The term of service is for four years, which may be extended to five if the army reserve has been called up for permanent service. The organisation of this force is in the hands of county associations established by the Army Council. The War Office, however, is responsible for the financing and training of the force. The Territorial Army is only liable for home service in time of peace, but as the supreme position of the Navy in home waters since the War has practically eliminated for the time being all risk of invasion, members of the force are now asked to accept liability for service overseas in time of war, subject to the consent of Parliament.

The war of 1914-18 made compulsory service necessary. Accordingly by the terms of the two Military Service Acts passed in 1916 every male British subject ordinarily resident in Great Britain who was between the ages of 18 and 41 was deemed to have enlisted for general service with the colours for the period of the war. In April 1918 a new Military Service Act raised the age limit to 50, and in certain cases (as of medical men) to 55.

Exemption from service was allowed to clergymen and ministers of all denominations. Under the 1916 Acts exemption was allowed in certain cases, *e.g.* unfitness through health or infirmity, or a conscientious objection to warfare, and a system of local and appeal tribunals was established. The 1918 Act gave the Crown power to cancel all exemptions, should an emergency arise, by Proclamation. These Military Service Acts expired in 1920.

§ 105. Position of the Soldier.—By enlistment a soldier gets rid of none of his liabilities as a citizen, but becomes

subject in addition to those attaching to a person "subject to military law." Soldiers are therefore liable to punishment by military courts called Courts-martial for offences against good order and military discipline. The ordinary civil courts, however, have power to say whether the Court-martial has exceeded its jurisdiction, and for certain serious offences, such as murder, the trial must be before them.

A soldier is bound to obey all lawful commands of his superior. If any command is not lawful and he obeys it he is, however, responsible in the ordinary courts for his action, and ignorance of the law will not be accepted as an excuse. The difficulty thus caused is not great in practice, as a case against a soldier who had reasonable grounds for believing a command to be lawful would not be pressed.

An ordinary soldier enlists by making a declaration and taking the oath of allegiance before a magistrate. An officer is appointed by commission under the sign-manual. A soldier must serve his term unless he purchases his discharge within three months of enlisting, but may be discharged at the pleasure of the Crown.

§ 106. **The Secretary of State for Air** is one of the most recent additions to the heads of government departments. The Royal Flying Corps came into existence in 1912, and was at first divided into two wings, the Royal Naval Air Service and the Royal Flying Corps, administered by the Admiralty and War Office respectively. In addition a joint Air Committee was formed, consisting of representatives of both services, with the object of securing co-operation. The powers of this body were very limited, and it failed to secure the essential collaboration. A second Committee, formed in February 1916, was equally unsuccessful. This was followed by an Air Board in May, and by a second Air Board in January 1917, but both of these had inadequate powers.

Finally, in January 1918 an Air Council was formed, and its President given the status of a Secretary of State, as Air Minister. In the same year the naval and military wings of the service were amalgamated, under the Ministry of the Air, as the Royal Air Force; and the Ministry supplied to the Admiralty and War Office contingents of this Force. At the same time an Independent Air Force was organised, working in conjunction with the Royal Air Force, but operating under the Air Ministry.

The Air Council controls civil enterprise, which since 1919 has been in the charge of a separate branch of the Ministry, the Department of Civil Aviation. This Department has power to exercise a general supervision, to grant certificates and issue regulations and licenses, to make grants for the encouragement of aerial development, to provide aerodromes, to organise air routes throughout the Empire, etc. All matters connected with air navigation were expressly included in the work of the Air Council by an Act of 1919.

§ 107. **The Air Council** is presided over by the Secretary of State for Air. In addition to the President it comprises the Parliamentary Under-Secretary of State, who acts as Vice-President of the Board, the Chief of the Air Staff, the Controller-General of Civil Aviation, the Director-General of Supply and Research, two additional members, and the Secretary of the Air Ministry, who acts as finance member.

The office of Controller-General of Civil Aviation is civilian in character. The finance member has control of finance, lands, and contracts.

The Meteorological Office has, since 1919, been attached to the Air Ministry. The control is vested in a Director and Committee appointed by the Air Council.

§ 108. **The Admiralty Board** is the successor of the Lord High Admiral. It was originally constituted at the

close of the seventeenth century and with two short exceptions has been in existence ever since. It consists of the First Lord, who is the cabinet minister responsible for the navy, four Sea Lords, a Civil Lord, a Deputy Chief, and an Assistant Chief of Naval Staff. To these are added the Judge Advocate of the Fleet, a Parliamentary and Financial Secretary, and a Permanent Secretary. The last two were not originally members of the Board, but now attend its meetings by virtue of an Order in Council, while the two Chiefs of Naval Staff are recent additions since the reorganisation of the Admiralty in 1917.

The Board is a consultative body which directs the working of the navy. It usually meets once a week at least, but any two of its members can issue an order in an emergency. The various Lords are supposed to be on an equality, but as a matter of fact the Naval and Civil Lords are really subordinate in great measure to the First Lord.

§ 109. **The First Lord of the Admiralty** is responsible to the Crown and to Parliament for all the business of the Admiralty. He is always a member of the Cabinet and represents the navy in Parliament. In conjunction with the Cabinet he determines what provision is to be made for the naval requirements of the Empire.

The First Lord has the duty of general direction and supervision. The other members of the Board are his advisers and are responsible to him for the business of their departments. He also attends personally to questions of promotion and gives nominations to cadets to enter the service.

§ 110. **The other Lords of the Admiralty.**—To each of the members of the Admiralty Board specific duties have been assigned. Several changes in Admiralty organisation were made during the war, the principal feature being that a Naval Staff was created to isolate and so facilitate

the work of planning and directing naval operations. The duties of the Admiralty are now grouped under the two headings of Operations and Maintenance.

The First Sea Lord, who is also Chief of the Naval Staff, the Deputy Chief of the Naval Staff, and the Assistant Chief of the Naval Staff are responsible for the Operations Division. This Division is concerned with all preparations for war. It advises on all large questions of naval policy and the general direction of operations. It controls the organisation of the navy, the distribution of naval forces, and all matters relating to the fighting and sea-going efficiency of the fleet. It is concerned with strategy and tactics, the development and use of materials—including types of vessels and weapons—and with trade protection.

The officers in charge of the Maintenance Division are the other three Sea Lords and the Civil Lord. The Second Sea Lord deals with the personnel of the navy. He is in charge of the manning and training of the fleet and of the various barracks and educational establishments. Coastguard and reserve forces, hospitals and the Royal Marines are entrusted to him. The Third Sea Lord deals with all matters affecting the *matériel* of the fleet; he considers all questions in which the construction of ships, their alterations and efficiency are concerned.

The Fourth Sea Lord is in charge of stores and transport services. He also deals with questions of pay, pensions, compensations, and similar financial matters. In addition the naval detention prisons are under his control.

The Civil Lord is responsible for works, buildings, and Greenwich Hospital, and in addition is in charge of contracts and dockyard business.

The Parliamentary Secretary is responsible for the finance and expenditure of the navy. Under the control of the First Lord he draws up the estimates for the year,

which naturally depend to a large extent on what the requirements of the navy are decided to be.

The Permanent Secretary is not a politician, nor indeed are the Naval Lords. He is the connecting pivot on which the departments work, and carries on the traditions of the Board. He deals with its correspondence and has control over its general administration.

§ 111. **The position of the sailor** is slightly different from that of the soldier. This arises from the fact that the navy has not been declared illegal as the army has. The Navy Discipline Act of 1866, which contains "Articles of War," controls the discipline of the navy. Thus sailors may be considered as persons subject to military law although they are not bound by the Army Act. In other respects sailors and soldiers are in a similar position.

The naval forces consist of the men in the navy proper, the reserve, and the royal marines.

An anomalous mode of recruiting for the navy called impressment was formerly employed and has never been formally abolished, although it has not been used for a very long while. It consisted in the seizure and forced service in the navy of persons belonging to the seafaring class.

§ 112. **The Exchequer** was originally a committee of the Curia Regis dealing with financial matters. The judicial business connected with it was early separated from it and handed to the Court of Exchequer, which had been formed for the purpose and was presided over by the Barons of the Exchequer. The business remaining was two-fold, first to ascertain what money was due and then to receive it. The sheriffs were the principal collectors of the revenue, and twice in each year they were bound to appear at the Exchequer and account for the monies they had received. These accounts were kept by means of tallies. A tally was

the half of a stick which had been notched in a certain way to represent the money paid, and had then been split down the middle. The Exchequer kept one half, and the person paying took the other. This formed a kind of receipt.

§ 113. **The Treasury.**—The Treasurer became the principal officer of the Exchequer, and also one of the great officers of State. In 1612 the office was put into Commission, *i.e.* entrusted to a number of persons named in a Commission; since 1714 it has always been in Commission. In the course of the seventeenth century the Treasury separated entirely from the Exchequer. The Treasury Board now consists of the First Lord of the Treasury, several Junior Lords, the Chancellor of the Exchequer, together with certain Secretaries and a staff of officials. The Chancellor of the Exchequer, assisted by the Financial Secretary to the Treasury, deals with the financial side of the Board. The Parliamentary Secretary to the Treasury acts as the chief whip of the Government, and is the assistant of the First Lord in dealing with the large patronage of the department. The principal duty of the Junior Lords is to act as assistant whips. The whips have to see that the Government have always got a majority in the House of Commons.

The First Lord of the Treasury is usually Prime Minister, although this is not always the case. He does not take any great part in the management of the department, but he acts as arbiter in disputes between the various departments and the Treasury on financial matters.

§ 114. **The Chancellor of the Exchequer** is the minister responsible for the finance of the nation. The office was originally created in the time of Henry III. in order to serve as a check on the Treasurer. It is only in comparatively modern times that it has become of great political importance.

His chief duty is to adjust the national income to its expenditure. The way in which he proposes to do this is disclosed by an annual statement called the Budget, in which he estimates what will be the expenditure for the year, and then suggests in what way the income to meet it shall be produced. Accordingly it is in this statement that announcements of proposed taxation or remission of taxes are made. The practice of Parliament as to legislation with regard to financial matters has already been explained (§ 56), but the conduct of this legislation and the responsibility for the Government proposals rest with the Chancellor of the Exchequer. He has also, with the assistance of the Parliamentary Secretary, to represent the Treasury in Parliament.

The selection of the names of Sheriffs for the various counties to be submitted to the Sovereign is a remnant of his ancient jurisdiction.

§ 115. **The National Expenditure** may be divided into two parts. The first, which in 1921-22 was over one-third of the whole, comprises those items, such as the interest on the national debt, which are charged permanently upon the consolidated fund. The consolidated fund is composed of the revenue for the year. The remainder of the expenditure contains the supplies voted for the Army, Navy, Air Force, and Civil Service.

The estimates of what will be required for these purposes are sent to the Treasury, and there carefully considered in detail and with reference to the total expenditure of the year. Frequently modifications are suggested, but eventually the Chancellor of the Exchequer and the other Ministers concerned agree on the estimates and the Budget is formed on this basis. After Parliament has provided the money through the various stages of Committee of Supply, Committee of Ways and Means and Appropriation Act, it is

the duty of the Treasury to see that the money voted is expended for the purposes for which it was provided.

§ 116. **The National Revenue** is derived from a number of different sources. Some of these have a long and ancient history; others are of modern origin, but space will not permit anything more than a bare enumeration.

The customs are duties imposed on imported articles; the excise, on articles produced at home. These, with the produce of the death-duties, stamps on legal transactions such as conveyances, land tax, entertainments tax, and property and income tax, form the bulk of the nation's income. The excess profits tax imposed during the War has now been abolished.

The Post Office contributes its profits, and there is a small sum arising from the hereditary revenues of the Crown. The list is completed by a number of miscellaneous items, including the interest on the Suez Canal shares and the profits of the Royal Mint.

The revenue is collected by the officers attached to various departments, of which the principal are the Commissioners of Customs, the Commissioners of Inland Revenue, the Commissioners of Woods and Forests and the Postmaster-General. All the money collected by the various departments is paid day by day into the Bank of England to the consolidated fund. Until 1907 the proceeds of certain duties which were ear-marked for local purposes were paid over by their collectors to the local authorities in the various districts, but now every penny is paid straight into the consolidated fund.

§ 117. **The Civil List.**—It will be remembered that originally the King had almost complete control over expenditure, and that the powers of Parliament in this respect were only won after constant struggles. Besides the money voted by Parliament which was specifically appropriated

from the time of Charles II., the King possessed the hereditary revenues. After the Revolution of 1688 Parliament determined exactly for what purposes the King's income was to be used, and made up the amount necessary beyond what was produced by the hereditary revenues. George III. and subsequent sovereigns have surrendered these revenues to Parliament and received in return a Civil List of a fixed annual amount. This is purely for the personal expenses of the Sovereign, and is now fixed at £470,000. Grants amounting to a total of £146,000 are also made to other members of the royal family. The net proceeds of the hereditary revenues received in return by the State for 1916-7 were £530,000, so that the total cost to the taxpayer of the royal family for that year was £85,000.

§ 118. **Checks on Expenditure.**—In the first place all expenditure must be authorised by Act of Parliament, whether by some permanent Act or by the Appropriation Act for the year. As all revenue collected is paid into the consolidated fund, it is necessary for the spending departments to obtain the money they require from this fund. This cannot be done without the intervention first of the Treasury and then of the Comptroller and Auditor-General. The latter is an official, independent of the Government, who holds his office during good behaviour, and, like the judges, can only be removed on an address from both Houses of Parliament. He may not be a member of either House.

All withdrawals of public money from the fund are made in the first place by the Treasury. Its officials have first to send a demand to the Comptroller and Auditor-General to authorise the payment of the sum required. This authority is granted on his being satisfied that there is statutory sanction for the expenditure. When this is

done the Treasury directs the Bank of England to transfer the amount from the Exchequer account to the "supply account" of the Paymaster-General. The department concerned is then able to draw against this account, but may only spend the money for the purpose required.

The Comptroller and Auditor-General, besides controlling in this way the issue of public money, also acts, with the aid of his staff, as auditor of the public accounts. The various departments submit to him statements showing exactly how the money they have received has been spent. These are known as the "Appropriation Accounts." They are carefully examined to see if there has been any departure from the statutory authorisation, and reports embodying the results of this examination are laid before Parliament. The House of Commons refers these reports for examination to a standing committee called the "Public Accounts Committee." "Finance Accounts," showing the amounts received and issued, are also laid before Parliament by the Treasury. The House of Commons, which granted the money, is thus made fully acquainted with the manner in which it has been spent and is in a position to check any irregularity that may have taken place.

CHAPTER XI.

SCOTLAND AND IRELAND

§ 119. **The Union of Scotland and England** had often been aimed at by English sovereigns, but the method by which it was ultimately accomplished was very different from the efforts which had previously been made to that end. On the 24th March 1603 Elizabeth died, and James VI. of Scotland peacefully succeeded to the throne of England as James I.

Although united by the bond of a common sovereign the two kingdoms retained their own Constitutions, Churches and laws. The century that followed the accession of James showed the dangers of this divided rule and the possibility of divergent lines of action being taken. A more complete union was therefore eminently desirable, but the mutual jealousy of the two countries delayed its accomplishment until 1707. The details of the union were settled by commissioners appointed by the two nations, and the agreement they arrived at was embodied in two bills which were passed by the English and Scottish Parliaments respectively and subsequently received the royal assent. The two Parliaments were merged in the new British Parliament, free trade was established between the two kingdoms, taxation and the burden of the national debt were apportioned, and the succession to the Crown was settled in the manner which has been set forth in a previous chapter and made the same for the two kingdoms. Each nation, however, kept its own ecclesiastical and legal organisations and its own system of law.

§ 120. **Scottish Administration.**—For some time after the Act of Union a Secretary for Scotland was appointed, but the office ceased to be filled in 1746 and was not revived until 1885. In the meantime the administration of Scottish affairs was mainly in the hands of the Home Secretary, who acted through the Lord Advocate of Scotland. The latter office was similar to that of the Attorney-General for England, but differed in that various administrative duties were assigned to it. At the present time its holder retains a considerable amount of Scottish patronage and drafts the Government legislation for Scotland, but otherwise his position is very much the same as the English law officer. The latter, however, may not engage in private practice, while the former may.

The Secretary for Scotland now controls the work which was formerly administered by the Home Secretary, except that the latter retains the general administration of factories and workshops, mines and explosives. Other powers were transferred to the Secretary for Scotland in 1885 from the Privy Council, the Treasury and the then Local Government Board. He is president of the Scottish Board of Health—formerly the Scottish Local Government Board—which consists, besides himself, of the Scottish Solicitor-General, the Under-Secretary for Scotland, who acts as Vice-President, the Chairman, and five other members. Its duties are analogous to those of the English Ministry of Health. There is also a Committee of the Privy Council for Education in Scotland, while the Crofters' Commission has duties as to the land in the crofters' districts. Apart from the special functions of these separate departments the Secretary for Scotland has general control over Scottish administration. It should be noted that the Secretary for Scotland is not one of the six Secretaries of State.

Scotland still retains her own system of law and her own courts, but the final court of appeal is the House of Lords, and all Acts of Parliament extend to Scotland unless their scope is expressly limited to other parts of the kingdom.

§ 121. **The Union of Great Britain and Ireland.** - The connection of England with Ireland has differed greatly from that with Scotland. The latter developed a national organisation and united with England as an equal, but Ireland never evolved a national state out of its warring tribal divisions, and after a long and savage struggle, lasting from the first invasion under Henry II. down to the time of Elizabeth, fell a prey to the English invaders and its own disunion. Moreover, it was treated as a conquered nation, an unhappy fact which has left a legacy of bitterness and strife.

The first great landmark in the constitutional relations of England and Ireland was the statute passed at Drogheda in 1495, and known as Poynings' Law. Previously meetings of a Parliament on the English model summoned from the English colony in the "Pale" had been held, but this law limited the activity of such Parliaments to the acceptance or rejection of bills approved by the King in his English Council, and subjected Ireland to English statute law. The final conquest under Elizabeth was followed by two centuries of continual risings, stern repression, and religious strife. The Irish Parliament—which represented only the Protestant element—was kept in subordination to that of England. In 1782, however, the dangerous position in Ireland and abroad led to the concession of Parliamentary independence. The British Parliament renounced its right to legislate for Ireland, and the royal veto remained the sole check on Irish legislation.

The experiment did not work well. The Irish Parliament

represented only the Protestant minority, and the English ministers still controlled the Irish executive, which led to continual friction between Parliament and executive. The continued rebellions in Ireland convinced Pitt that the only solution was legislative union with Great Britain. In 1800 Acts of Union were passed by the British and Irish Parliaments, and the Union came into operation in 1801. The Irish Parliament was merged with that of Great Britain to form a Parliament of the United Kingdom, in which the Irish representation was fixed, and the subjects of both countries were accorded equal rights.

Beyond the disestablishment of the Irish Church, the provisions of the Act of Union remained practically untouched till 1914; but during the last quarter of the nineteenth century a strong movement in favour of "Home Rule" sprang up, led by the Irish Nationalist Party in the House of Commons. After various unsuccessful attempts to push a Home Rule bill through both Houses of Parliament, at last the Government of Ireland Act was passed in 1914, granting representative and responsible government to Ireland under a separate Irish Parliament. The operation of the Act was suspended for the duration of the War, but by 1919 conditions in Ireland had so changed that the Act was no longer acceptable. During the later period of the War, the more extreme Irish politicians organised themselves under the title of Sinn Fein ("Ourselves Alone") and demanded complete separation from Great Britain and the recognition of an Irish Republic. In the general election of December 1918 Sinn Feiners captured practically every Irish seat outside Protestant Ulster. This was followed by what was practically a civil war, terminated only after repeated attempts had been made by the British Government to arrive at a satisfactory solution of the Irish question. The arrangements

finally made, though a compromise, conceded most of the demands of the Irish, except those of the extremer section.

§ 122. **The Irish Free State and Ulster.**—The Irish problem is enormously complicated by the position of Ulster, largely English or Scottish in population and Protestant in religion. Ulster desires to retain the connection with Great Britain, while the Southern politicians wish to form a united Irish state. There is, further, the problem of the Protestant minorities in Southern Ireland, and of the existence of a large group of irreconcilable republicans. In 1920 a new Government of Ireland Act was passed, providing for two separate administrations, one for Ulster and the other for the rest of Ireland, and for a possible future union between the two administrations by mutual consent. Each section was to have its own legislature, with power to legislate in all but certain specified cases, its own judicature, and an executive responsible to the legislature and holding office of the Crown, represented by the Lord-Lieutenant of Ireland. Ireland was to send 46 members to the Imperial Parliament, 13 from Ulster and 33 from Southern Ireland.

A separate Parliament—consisting of a Senate of 26 members elected by the Lower House and of a House of Commons of 52 elected members—and Government have been established in Northern Ireland under the terms of this Act. But the continuance of armed resistance to the British Government on the part of the Sinn Feiners rendered the establishment of a Government for the South impossible. In 1921 an earnest effort was made to reach a settlement by conference between the Cabinet and a Sinn Fein delegation. It was finally arranged that Southern Ireland should form a Free State, in a position analogous to that of a self-governing Dominion, with complete powers of local self-government, except that special conditions

were to be laid down in regard to naval and military affairs, foreign policy, tariffs, and other such matters. A Provisional Government, formed from among those Sinn Feiners who accepted the compromise, was set up, and a constitution for the Free State (see Appendix II.) has since been created and put into working, though the extremer Sinn Feiners refuse to abandon their demands for a republic.

§ 123. **The Channel Islands and the Isle of Man** form part of the British Isles, but have separate autonomous administrations of their own. They are not colonies strictly so called, although there are a good many points of resemblance. In Jersey, Guernsey, and the Isle of Man Lieutenant-Governors are appointed by the Crown, and all communications from the British Government to the islands are made by the Home Secretary through these officers. The Acts of the British Parliament do not extend to these islands unless they are specially mentioned.

The Isle of Man has a Parliament of its own, consisting of two houses, which has power to make laws for the island. The upper house includes the Governor and Legislative Council, consisting of various island officials; the lower is called the House of Keys.

Jersey and Guernsey have separate governments of the same type, while Alderney and Sark are dependencies of Guernsey. The inhabitants put forward the curious claim that these islands are really the nucleus round which the British Empire has grown. They were part of the Duchy of Normandy at the time when William the Conqueror landed in England, and have always since remained part of the British Dominions.

The local legislative bodies and courts have a very ancient origin and have undergone but little alteration. All legislation requires the assent of the Crown in Council, and is subject to the veto of the Governor.

PART IV.

THE JUDICIARY.

CHAPTER XII.

THE HISTORY OF THE JUDICIARY.

§ 124. The Function of the Judiciary. For the good government of a State it is not sufficient that the legislature should pass laws for the people to observe. It is necessary also for the State to select certain persons to decide whether in particular cases those laws have been observed. Such persons are termed judges. If any dispute arises between two or more persons as to the ownership of anything or as to the right of a person to claim compensation for an injury done to him or for the breach of some agreement, the person aggrieved may bring the matter before a judge and have the matter settled according to the justice of the case. In doing this it is the duty of the judge to say what the law is. The law in question may be laid down by an Act of Parliament, or it may be part of the Common Law, *i.e.* that portion of our law which is not set down in any written statute or ordinance but depends on immemorial usage. The Common Law is supposed to have a principle for every possible case, and its rules may be found in cases previously decided, on the analogy of which the judge rests his decision of fresh questions. In doing this it frequently happens

that the judge lays down what is really new law, or in other words performs the function of a legislator. But in theory he merely declares what always has been the law, although perhaps until the case before him it had not been necessary to lay it down definitely.

Besides the settlement of disputes, the judge has in another class of cases to determine whether a person brought before him has done something forbidden by law. This latter function is called his criminal jurisdiction in contradistinction to the former, which is called his civil jurisdiction. It is difficult to say exactly why some matters are considered civil injuries and others crimes, but broadly speaking the latter consist of such acts as militate directly against the public well-being and order, whether or not they also injure some particular person, while the former are merely infringements of some private right. In the earliest times many acts which are now considered crimes were regarded merely as civil injuries. But as the control of the State over peace and order has increased, the list of crimes has grown.

§ 125. **The Early Administration of Justice.**—Before the Norman Conquest the principal courts were those of the hundred and the shire, although the Witan acted as an ultimate and supreme court of justice in both civil and criminal cases. Trial in local courts was the rule, but as the powers of the King increased he came to be looked upon as the fountain of justice, and all jurisdiction was exercised by him through his officers, or by landowners who held their title from him.

After the Norman Conquest the local courts still continued and the Curia Regis or Council of the King became the supreme court of the kingdom. William I. separated the ecclesiastical from the secular jurisdiction and gave the control of the former to the clergy.

§ 126. **Initerant Justices** date from the reign of Henry I. They were not, however, fully organised until the time of Henry II. They tried both judicial and financial matters. They are mentioned in Magna Carta, but their visitations were somewhat irregular until the time of Edward I., who reorganised them and appointed definite circuits. The present system of circuits, on which the judges have power to try all civil and criminal cases, is the direct outcome of the appointment of these earlier Justices in Eyre.

§ 127. **The Common Law Courts.**—The Exchequer was the financial side of the Curia Regis and determined matters relating to the revenue of the country. It separated definitely from the Curia Regis about the end of the twelfth century and acted as a court of law dealing with revenue cases and disputes concerning the national finance.

The Court of King's Bench was another offshoot of the Curia Regis and is itself sometimes known by the latter name. Its origin dates back to 1178, when Henry II. appointed five members of the Curia as a permanent court to hear the complaints of the people, reserving appeals to himself in Council.

The Court of Common Pleas had its origin in the clause of Magna Carta which provided that common pleas, *i.e.* suits between subjects, should be held at some fixed place.

These three last-mentioned courts all arose from the Curia Regis, but a general judicial power was still left in the King's Council. At first the three courts had the same staff of judges, but separate judges were assigned to them in the time of Henry III. Their functions, although at first diverse, became very similar by reason of certain fictions which were resorted to. Thus the Court of Exchequer obtained jurisdiction over a matter which should have

come before the Court of Common Pleas by the suitor alleging that he owed the King a debt which he could not pay owing to the refusal of his adversary to satisfy his claim. The three courts were united by the Judicature Act of 1873 and merged into one division of the High Court by an Act of 1881.

§ 128. **The Court of Chancery** arose out of the equitable jurisdiction of the Chancellor. When people could not obtain redress from the Common Law Courts they petitioned the King, and in 1280 matters of grace and favour were referred to the Chancellor to be reported on before coming before the King in Council. The Chancellor was directed to act in accordance with what was right and equitable. In 1348 all matters of grace were definitely assigned to the Chancellor, and this may be taken as the foundation of the Court of Chancery. It quickly grew in power, and was greatly aided in this respect by the writ of subpoena which compelled the attendance of persons summoned before it. This writ was devised in the reign of Richard II. Frequent quarrels as to the powers of the Court of Chancery occurred between it and the Courts of Common Law. At first the decisions of the Court varied according to the personal opinion of the Chancellor for the time being, but from the reign of Charles II. to the beginning of the nineteenth century the principles on which it acted became gradually as settled as those administered by the rival courts of Common Law. Its procedure, which was very dilatory, was revised in 1852, and in 1873 it became one of the divisions of the High Court. It was then laid down that in cases of conflict the principles it administered were to prevail over the rules of strict law.

§ 129. **The Judicial Powers of the Council.**—It has been seen that both the Common Law and the Chancery

Courts originally emanated from the King's Council. The King was considered to be the fountain of justice, and even after these courts had separated from the Council proper there was a residuary judicial authority left in it.

In 1487 a committee of the Council was established with considerable judicial powers. Various changes in its composition were made and it later became known as the Court of Star Chamber. In the reigns of the earlier Stuarts this court was used for political purposes and to oppress those who thought differently from the King. It was abolished by the Long Parliament in 1641. At the same time were abolished the Court of Requests, which was an earlier and less important offshoot of the Council, the Court of High Commission, a court for ecclesiastical offences established by Elizabeth, and the Council of the North.

There still remained, however, certain judicial powers in the King in Council. The principal of these was the determination of petitions brought before it by persons outside the kingdom. In 1833 the Judicial Committee of the Privy Council was constituted, and this is now the Supreme Court of Appeal from all courts in the British Dominions and Dependencies. It has also certain jurisdiction in ecclesiastical and other matters.

It must be remembered that the peers were members of the King's Council as well as of the Parliament, and it is to the former body therefore that must be assigned the origin of the present appellate jurisdiction of the House of Lords.

§ 130. **Various other Courts** had arisen before the final consolidation of the Courts into a definite system in 1873. Thus the Court of the Lord High Admiral had special jurisdiction over injuries at sea, and also a criminal jurisdiction which was taken away in 1844. Its origin

can be traced to the reign of Edward III. Its powers were defined in the time of Richard II., and after being regulated by various statutes passed in the reigns of Henry IV., Henry VIII. and Victoria its jurisdiction was transferred to one of the Divisions of the High Court in 1873.

The various ecclesiastical courts, although they form part of the English judicial organisation as having jurisdiction over matters relating to the State church, need not be further mentioned, but it should be noted that before 1857 they dealt with testamentary and matrimonial matters. In 1857 this jurisdiction was taken away and special courts were established for Probate and Divorce matters. These two latter courts were in 1873 merged in the Probate, Divorce and Admiralty Division of the High Court.

§ 131. **The Judges.**—It has already been seen that the judges were originally members of the Council of the King, and, indeed, even at the present day a writ is sent to them on the summons of a Parliament in order that they may attend and give advice if asked. In 1897 they were thus asked for their opinions on a difficult case which came before the House of Lords. They held their office at the King's pleasure, but from the time of Richard II. until the beginning of the Stuart period there was no attempt to influence their opinions by threats of dismissal. Indeed, on two occasions in Elizabeth's reign they made a stand against illegal acts of the Crown. In 1607 it was finally decided that, in accordance with the practice which had obtained since Henry VI., the King had no power to hear cases in person. This was followed in 1616 by the case of "Commendams" in which James I. had asked the judges to postpone their verdict until they had spoken with him and they had refused. All the judges except Coke were forced to apologise, and Coke's

refusal to do so caused his dismissal. Similar dismissals took place later, and for the remainder of the Stuart period the judges usually proved submissive to the wishes of the Crown. The power of dismissal was seen to be so dangerous that by the Act of Settlement, 1701, it was laid down that the judges should hold office as regarded the Crown during good behaviour, although in any case they might be removed on an address passed by both Houses of Parliament. This is the nature of their tenure to-day. All the judges except the Lord Chancellor are appointed by the Crown on the advice of the Lord Chancellor.

§ 132. **The Justices of the Peace** are the local criminal magistrates. The origin of their office can be traced back to 1195, when certain knights were chosen to receive oaths for the preservation of the peace. These "Conservators of the Peace" were appointed for every county in 1327, and in 1360 became known as Justices of the Peace, having certain criminal jurisdiction assigned to them. Powers to judge at Quarter Sessions were given in 1389, and in 1542 they were authorised to hold Petty Sessions. Their administrative powers were mostly transferred to County Councils by an Act passed in 1888. A property qualification was formerly necessary, but this was abolished in 1907. They are appointed by the Lord Chancellor, who acts on the advice, for counties, of the Lord-Lieutenant, and, for boroughs, of the Home Secretary. They are unpaid.

§ 133. **Trial by Jury.**—It would be impossible to trace in this book the various forms of procedure which have from time to time obtained in our Courts, but a few notes as to the history of trial by jury which bulks so largely in our judicial system may not be out of place. Its exact origin is obscure, and many theories have been put forward to account for it. It is clear, however, that originally the jurymen were witnesses, rather than judges of the truth.

Of local origin, they were first used to give information of local affairs, especially in financial enquiries. Later they had to determine local disputes, and if some of their number knew nothing about the matter fresh jurymen were added until twelve were unanimous. The Constitutions of Clarendon, 1164, provide the first statutory recognition of their position. In criminal matters they had to say from their local knowledge what men in their district were guilty of offences, and those whom they "presented" or stated to be guilty had to undergo the ordeal. When this method of establishing the guilt or innocence of the accused was abolished in 1215 the custom arose of having a second or petty jury to decide on the truth of the presentment. It was often found that these latter jurors did not know sufficient of the case to come to a decision, and a further custom arose of "afforcing" the jury, that is, adding to it persons who did know the facts. By the time of Edward III. these persons had no voice in the verdict, but merely gave evidence as to what they knew; thus was established the distinction between jurors and witnesses. In the reign of Henry IV. all evidence had to be given in court, and hence the judges had to control the methods in which it was given. Later still the jury entirely ceased to be composed of persons who knew the facts, and in the first half of the eighteenth century the last vestige of their former position as witnesses had disappeared. This jury is now known as the petty jury, while the jury of presentment mentioned above is called the grand jury. In the time of Edward III. it was decided that this petty jury must be unanimous in their verdict. For a grand jury, which varies in number from twelve to twenty-three, it is sufficient for twelve to agree.

CHAPTER XIII.

THE CIVIL LAW COURTS OF TO-DAY.

§ 134. **The Supreme Court of Judicature.**—By the Judicature Act of 1873, with the amending Act of 1875, the existing civil courts were consolidated into the Supreme Court of Judicature. This was divided into two parts, a High Court of Justice and a Court of Appeal. The former was again divided into five divisions for the sake of convenience, viz. Chancery, King's Bench, Common Pleas, Exchequer and Probate, Divorce and Admiralty. In 1881 the Common Pleas and Exchequer Divisions were merged in that of King's Bench, leaving only three divisions of the High Court. To these divisions has been given all the jurisdiction which was exercised before 1875 by the Courts which they succeeded. Practically, that is, they have jurisdiction in all civil actions, together with a certain amount of criminal jurisdiction and an appellate jurisdiction from inferior courts. Certain matters are for the sake of convenience assigned to the respective divisions, but each can give any relief that could be given by any other division, and any judge can, if necessary, sit in any division. The staff of the Chancery Division consists of the Lord Chancellor and six other judges; of the King's Bench Division, of the Lord Chief Justice of England and fifteen other judges; and of the Probate, Divorce and Admiralty Division, of the President of that Division and another judge.

The Court of Appeal hears appeals from the High Court, and also from the Railway and Canal Commissioners, and, on cases under the Workmen's Compensation Act, from the County Courts. Its staff consists of the Master of the Rolls and six Lords Justices of Appeal. The Lord Chancellor, the Lord Chief Justice of England, and the President of the Probate, Divorce and Admiralty Division also sometimes sit as judges in this court. Generally three judges of the court sit together to try an appeal, but in some cases two only are necessary.

The commissioners who as the successors of the Justices in Eyre went on circuit before 1875 are still appointed. Each is now "deemed to constitute a court of the said High Court of Justice." They can therefore do everything that a judge of the High Court can do. Under powers given by the Act of 1875 the circuits have been considerably re-arranged.

§ 135. **The House of Lords** is the final Court of Appeal, not only from the Courts of England and Wales, but also from those of Scotland. A case comes up to it from the Court of Appeal on the certificate of two counsel engaged in it that it is a fit one to be heard by the House. On the hearing of an appeal there must be present three at least of the following persons: (1) The Lord Chancellor of Great Britain, (2) the Lords of Appeal in Ordinary, (3) Peers of Parliament who hold, or have held, high judicial office. The late Lords Halsbury and Brampton are examples of the last class, while the position of the Lords of Appeal in Ordinary has already been explained. The hearing of the case is considered to be a sitting of the House, but other peers do not attend.

§ 136. **The Conduct of an Action.**—A code of rules has been drawn up to regulate the procedure of the Supreme Court. These rules are issued by a Rule Committee

appointed under the Act of 1875, and before coming into force have to be laid before Parliament. If there is no opposition for forty days they become binding. They are altered and amended from time to time.

An action is commenced by writ. This is a notice briefly setting out the claim of the person who brings the action, who is called the plaintiff. It must be served on the person against whom the action is brought, who is called the defendant. Special procedure is used where the claim is for a definite sum of money, and also where the defendant, after service of the writ, fails to put in an appearance. The procedure in the three divisions also varies to some extent. In the King's Bench Division what is known as a Summons for Directions is usually taken out, and under this one of the Masters, who are permanent Law Court officials, settles in what manner the action is to be prepared for trial. He directs what each side is to do, so that the matters in dispute between the parties may be defined ready for the trial. The trial may be before a judge alone or by judge and jury. The former method is more common in the Chancery Division, the latter in the other Divisions. The jury may be an ordinary or a special one. The latter are selected from a list of more responsible persons and are paid more.

The procedure at the trial, at which the parties are usually represented by counsel, is shortly as follows. After the nature of the action has been stated the plaintiff's counsel opens the case, *i.e.* makes a speech showing what is his client's claim, and how it is proposed to prove it. The plaintiff's witnesses are then called and examined. The defendant's counsel has the right of cross-examining each one in order to upset, if possible, the story they have told, or to get further details. If necessary the plaintiff's counsel re-examines the witness as to anything fresh

brought out in cross-examination. When all the plaintiff's witnesses have been examined the defendant's counsel opens his client's case. The defendant's witnesses are then examined, cross-examined and re-examined, and after this is finished his counsel addresses the jury on the evidence in detail and shows, as far as he can, that it is favourable to his client's case. The plaintiff's counsel then replies, and the judge sums up the evidence, and informs the jury on what points their verdict is required. The jury must be unanimous on their verdict unless the parties agree to accept the decision of the majority. When the jury have returned their verdict the judge pronounces judgment in accordance with their findings and deals with the question of costs. Generally the loser is made to pay the costs of the other party. This does not, however, indemnify the latter, as he has always to pay for a number of items which are necessary for the conduct of his case but for which he is not allowed to charge. Appeal is only allowed on a question of law, and not on one of fact. The appeal is in the first instance to the Court of Appeal, whence there is a further right of appeal to the House of Lords.

§ 137. **Inferior Courts.**—In 1846 a system of inferior courts for the trial of matters of minor importance was instituted. These courts are known as County Courts. England is divided into a number of districts, for each of which a County Court is constituted. The Courts are held at various places in the district at various times. The judges, who must be barristers of seven years' standing, are appointed by the Lord Chancellor and may be dismissed by him. Rules of procedure are laid down in a similar way to those for the High Court.

The jurisdiction of a County Court is limited generally to £50, but a recent statute has enlarged this in cases of

contract to £100 for certain Courts. Jurisdiction is also given specially under certain statutes, the most important of which is the Workmen's Compensation Act. Certain Courts also can determine bankruptcy matters, but none can try actions of libel, slander, breach of promise of marriage or seduction.

In cases where the subject-matter of the action exceeds £20 there is an appeal on a point of law to the High Court, but appeals under the Workmen's Compensation Act go straight to the Court of Appeal.

Besides the County Courts there are several other courts, such as the Mayor's Court in London, and the Court of Passage at Liverpool, which have a local jurisdiction. These courts are mostly of very ancient origin, and have so far escaped the hands of the reformer.

§ 137*a*. **Other Courts of Appeal.**—Prior to 1907 a person who had been convicted on a criminal charge was unable to appeal against a conviction. In that year Parliament passed the Criminal Appeal Act, which established the Court of Criminal Appeal. To this court any person who considers himself wrongly convicted on indictment may appeal on a question of law, or, by leave, on a question of fact, or one of mixed law and fact. A further appeal by permission lies from this court to the House of Lords.

The Judicial Committee of the Privy Council, which is composed of those members of the Privy Council who have held high judicial office, together with the six Lords of Appeal in Ordinary, deals with appeals from the courts of the Channel Islands and from Consular Courts and Courts of Vice-Admiralty, and from the courts of India and the British colonies. Provision is now made for the inclusion of representatives of India and the self-governing Dominions.

CHAPTER XIV.

THE CRIMINAL LAW COURTS OF TO-DAY.

§ 138. **The Assizes.**—This is the popular designation of the Courts held by the judges who go on circuit through the various counties. Since 1875 there has been considerable rearrangement, and the country is now divided into eight districts or "circuits." The judges go to all the county and other assize towns three or four times every year and try the civil and criminal cases that have occurred in the district. Barristers accompany the judges on circuit in order to act as counsel for or against the prisoners. As a general rule only cases dealing with the more serious crimes are brought before these courts, but they have authority to try all crimes.

In 1834 the Central Criminal Court, which is popularly known as "The Old Bailey," was established to take the place of the Assize Court for offences committed in the City of London, the County of Middlesex and certain specified parts of the counties of Essex, Kent, and Surrey. Practically it is the Assize Court for London and sits at least twelve times a year.

§ 139. **Quarter Sessions.**—These are courts held in every county once a quarter at stated times for the trial of offences of a less serious character than those usually tried at the Assizes. The Court is composed of two or more of the justices of the peace for the county. One of these is made chairman and acts as judge, consulting his

colleagues when he thinks fit. Certain boroughs have a Court of Quarter Sessions of their own. In these an official known as the Recorder, who must be a barrister of five years' standing, is the sole judge.

Sessions for the Administrative County of London are held twice a month at Newington and Clerkenwell. They are presided over by a paid judge.

Besides trying various offenders Quarter Sessions acts as a Court of Appeal from justices sitting as courts of summary jurisdiction, and on matters of rating, licensing and poor-law administration. In these cases they sit without a jury.

§ 140. **Summary Jurisdiction** is the description given to the powers of justices of the peace in trying minor criminal offences. The absence of a jury is of the essence of the proceedings. The Court is termed Petty Sessions and is formed of two or more justices. Each county is divided into several districts, and in each a Petty Sessional Court is held. Boroughs which have a separate commission of the peace hold their own Petty Sessions presided over by their own justices. The justices are unpaid, but in London and certain other large towns their place is taken by paid magistrates, who must be barristers of a certain standing. One of these magistrates has the same powers as two justices.

The Petty Sessional Courts try and determine a very great number of cases, and their jurisdiction tends steadily to increase They have power to fine and also to imprison, but the whole of their powers are derived from statutes, and they must not exceed the limits there laid down. In the majority of cases they cannot award more than six months' imprisonment. The matters which come before them include petty assaults and thefts, applications for judicial separation, offences relating to game, offences

against order, such as drunkenness and vagrancy, cruelty to children, breaches of bye-laws and adulteration of food. In some cases which would otherwise have to go to Quarter Sessions or Assizes, the justices have jurisdiction if the accused consents to be tried by them.

By an Act passed in 1907 any court, instead of sentencing an offender, may discharge him if in view of all the circumstances it considers such a course desirable. It may place the offender under a probation officer and order him to comply with such regulations as it may lay down to secure his leading an honest and industrious life in the future. Acts of 1908 have created Borstal institutions for offenders under twenty-one and have given power to detain habitual criminals for lengthy terms.

One justice sitting alone has jurisdiction over certain very small offences, such as drunkenness, but he cannot inflict a higher fine than twenty shillings or greater imprisonment than fourteen days.

§ 141. **Procedure to Trial.**—Besides the determination of minor cases, as stated in the last paragraph, the justices have another duty to perform. In more serious cases they hold a preliminary enquiry to see if there is sufficient evidence to warrant sending the accused for trial to Quarter Sessions or Assizes. If the examining justice—for one is sufficient for this purpose—sends the accused for trial, a written accusation called a "Bill of Indictment" is drawn up. This is laid before the grand jury at the Quarter Sessions or Assizes as the case may be. The witnesses for the prosecution appear before the grand jury, and if the latter think there is sufficient evidence for the accused to be tried they return what is called a "True Bill." It is not necessary for the grand jury to be unanimous, but there must be at least twelve members in favour of the verdict.

As a general rule any person may bring an accusation before the grand jury, but for certain offences the preliminary examination before a justice which is usual in other cases becomes essential.

§ 142. **Procedure at the Trial.**—The trial takes place before the Judge at Assizes or the justices or Recorder at Quarter Sessions, sitting with a petty jury, which numbers twelve. Counsel usually appear both for the prosecution and the defence. Counsel for the prosecution opens the case by stating the principal facts it is intended to prove. His witnesses are then examined, cross-examined and re-examined. After the witnesses for the prosecution have been heard counsel for the defence opens his case, and his witnesses are examined, cross-examined and re-examined. Next counsel for the defence sums up his case and is followed by counsel for the prosecution in reply. If, however, no evidence is called for the accused, or he is the only witness, the final speech of counsel for the prosecution must precede that of counsel for the defence. Before 1898 the accused and his wife were not allowed to give evidence, but by a statute passed in that year this is now permitted if the accused desires it. They cannot, however, be compelled to give evidence. After the speeches of counsel the judge sums up the evidence and instructs the jury on the points of law involved. They then consider their verdict, which will be either "guilty" or "not guilty." They must be unanimous. If they cannot agree they are discharged and the prisoner is retried. If the jury have given a verdict of guilty the judge pronounces sentence. In the case of murder this must be death, but in other cases the judge has a discretion, provided that he does not exceed the maximum laid down for the offence.

§ 143. **Appeal.**—The Criminal Appeal Act of 1907 came into force on the 18th of April, 1908. Before this an

appeal was allowed only on a point of law, and then not unless the presiding judge or justices thought fit to reserve the point for the consideration of the Court for Crown Cases Reserved. But by the above-mentioned Act a Court of Criminal Appeal has been established, and every person convicted on indictment, *i.e.* convicted at Assizes or Quarter Sessions, may appeal against his conviction. This appeal may be on a point of law, or against his sentence, or, with the consent of the presiding judge or the Court of Criminal Appeal itself, on a question of fact. The Court has full powers as to evidence and other matters and will set aside the conviction if there has been in any way a miscarriage of justice, but it will not set aside any conviction even if there has been some technical mistake if no substantial miscarriage of justice has occurred. If a sentence is appealed against the Court may increase or diminish it. The judges of this Court consist of the Lord Chief Justice of England and the judges of the King's Bench Division of the High Court specially appointed for the purpose. Each appeal must be heard by an uneven number of judges, not less than three.

Where a point of law of exceptional public importance is involved an appeal may, with the sanction of the Attorney-General, be made against the decision of the Court of Criminal Appeal to the House of Lords, but otherwise the decision of the Court of Criminal Appeal is final.

§ 144. **Other Criminal Courts.**—The Coroner's Court is composed of the Coroner sitting with a jury which may number from twelve to twenty-three. Its business is to inquire into cases of violent or unnatural death, or sudden death where the cause is unknown. The Coroner must also hold an inquest where he has reason to believe that any death is due to a cause other than illness. If the jury by a majority of twelve return a verdict of murder or

manslaughter against any one, such person must immediately be committed for trial, but the preliminary hearing before the justices is usually carried out. The Coroner's Court has also jurisdiction as to treasure trove.

In cases of treason and felony, peers and peeresses are entitled to be tried before the House of Peers. If Parliament is sitting a Lord High Steward is appointed to act as chairman of the House of Lords for the trial. If Parliament is not sitting the court is called the Court of the Lord High Steward of Great Britain, and the Lord High Steward acts as a judge instead of merely chairman, the remaining peers practically forming a jury.

The position of Courts-Martial has already been considered.

§ 145. **Bail and Costs.**—When any person is accused of an offence he must be kept under the supervision of the proper officers unless he is admitted to bail. Bail consists of security given either by the accused or some friend that he will attend the court when required for the purposes of trying the accusation. The Bill of Rights states that excessive bail must not be demanded. Bail is not allowed in cases of treason, and the justices have a discretion as to allowing it in the case of the more serious crimes.

It may be noted that when a person has been charged with an indictable offence, an Act of 1908 has given power to the court to order the payment of certain costs of the prosecution or defence out of local funds. The court may also order the prisoner himself to pay the cost of the prosecution.

PART V.

LOCAL GOVERNMENT.

R. H. Tangnoo

CHAPTER XV.

LOCAL GOVERNMENT AUTHORITIES.

§ 146. **Historical.**—The history of Local Government in England is one of gradual growth and development. Until the last forty years, however, this development had not been the outcome of any special plan, but as fresh needs arose measures were taken to satisfy them without much reference to the then existing authorities and their duties. In the nineteenth century in particular a number of different authorities were created for different purposes on the *ad hoc* system, *i.e.* these bodies were created each to carry out a particular duty without reference to other bodies. In 1883 Mr. Chalmers wrote:—"Local Government in this country may be fitly described as consisting of a chaos of areas, a chaos of authorities, and a chaos of rates." At that time there were 27,069 local authorities levying eighteen different kinds of rates. Each had its own staff of officers. Few had the same boundaries. A man was frequently governed by six different local authorities. This "jumble of jurisdictions" has now been cleared away by the Local Government Acts of 1888 and 1894, which, while preserving as

far as possible local traditions and historical associations, have set up the hierarchy of local authorities which will shortly be considered.

In tracing the growth of Local Government it must always be remembered that the boroughs have had a history different from that of the rest of the country. Their areas have always had to be deducted from the general county organisation.

Originally the country was divided into shires, hundreds, and townships, each with its own local assembly. The shire or county court and the hundred moot gradually fell into disuse. After the Norman Conquest much of the local administration fell into the hands of the autocratic manorial court, but with the rise of the parish system a rival authority was created. This was the voluntary parish meeting presided over by the parish priest, who later became known as the "parson" (person) or "rector" (regulator) of the parish. New powers of management were constantly acquired by the parish meeting, and it finally outdistanced its competitor when, in 1601, the duty of poor relief was handed over to it and the church-wardens were made overseers for the purpose. Gradually also the parish meeting became known as the vestry, thus taking the name of its place of assembly.

The whole of the administrative work of the county was gradually entrusted to the justices of the peace. Created originally for judicial purposes, they were found to be the most convenient authority for administration. Entirely a nominated body, they formed until 1888 an anomaly in a constitution whose main watchword is "no taxation without representation." Their work was, however, well done, and their "strict observance of law, abstention from political partisanship, and freedom from corruption" had led to the willing acquiescence of the

county ratepayers in their rule. The transference of their administrative duties to the County Councils created by the Act of 1888 was due, not to any dissatisfaction with their administration, but to the desire for the logical extension of the principle of democratic representation. Experience has shown that the change in the system of representation has left practically unchanged the class of persons who administer the business of the county.

The borough has always looked after its own local affairs. There were many individual differences, and each relied upon its own charter from the Crown. By the fifteenth century, however, their government had, as a general rule, become vested in a body consisting of mayor, aldermen and council. As we have already seen, their privileges were usually confined to a very small number of the inhabitants and corruption was rife. These abuses were swept away by the Municipal Corporations Act of 1835, which provided an uniform constitution for the majority of these towns. The work of reformation was completed by the Municipal Corporations Act of 1882, but the city of London still retains its ancient constitution.

It should be noted that the three great extensions of the parliamentary franchise which the nineteenth century has witnessed have each been closely followed by changes in the form and powers of local authorities. Thus the Reform Act of 1832 was followed by the Poor Law Amendment Act of 1834, which reorganised the relief of the poor, and by the Municipal Corporations Act of the following year. Mr. Forster's Elementary Education Act of 1870, and the Public Health Acts of 1872 and 1875, were preceded by the Reform Act of 1867, while the reorganisation of local administration brought about by the Local Government Acts of 1888 and 1894 followed on the electoral changes of 1884-5. It would be unwise to regard these facts as a

series of historical coincidences merely. They exemplify the mutual influence of Central and Local Government, and the fact that in this country the two have developed side by side.

§ 147. **The Relations of Central and Local Government.** —Although Central and Local Government have developed side by side, yet there has been little connecting them until the last century. The justices and the vestries carried on the local administration in accordance with the powers which various statutory enactments had given them. If they exceeded those powers or exercised them wrongfully any citizen aggrieved could appeal to the Courts. But this was the sole check on maladministration. In the words of Redlich and Hirst: "After the close of the seventeenth century neither King nor Cabinet could exercise any regular and direct control over Local Government; for Local Government was completely localised and decentralised." The only method by which the Cabinet could really exert its influence was through the appointment of justices who shared its views.

During the last century, however, a system of central administrative control has been built up, which is now largely in the hands of the Ministry of Health, although the Home Office, the Board of Trade, the Ministry of Agriculture and Fisheries, and last, but not least, the Board of Education have certain not unimportant duties to perform. The work of these departments has already been considered. Their control is exercised by advice and inspection, and it is but rarely that compulsion is used, and then only by legal forms and within strictly defined limits. It is by these means that the central and local authorities are kept in touch, and that while the autonomy and individuality of local institutions are preserved the latter are enabled to benefit by the guidance

and control of the collective experience and knowledge of the nation.

§ 148. **The Organisation of Local Government.**—In urban and rural localities different schemes of Local Government prevail; nor is this surprising. The density of population is vastly different in the two kinds of area, and greater control has to be exercised in towns than in the country. Hence urban and rural administration cannot be completely combined.

The unit for Local Government is the parish, but it is only in rural areas that it has a local authority of its own. Above it comes the rural district, which contains one or more parishes. The counterparts of this in urban areas are the urban district and the municipal borough. The administrative counties are made up of rural and urban districts and boroughs. These administrative counties do not correspond exactly with the ordinary counties of England and Wales, as some of the latter are divided into two or three parts for the purposes of administration, while certain large towns have received the same powers of Local Government as a county and so are excluded from the administrative county.

Another area which must be mentioned is the "Union," consisting of one or more parishes grouped together for the better organisation of poor relief. In rural areas the unions coincide with the rural districts mentioned above. The rural district councillors also act as Guardians. The two offices are quite distinct, but only one election is held. In urban areas, on the other hand, separate Boards of Guardians are still elected.

The Metropolis has its own organisation and requires eparate consideration.

§ 149. **The Administrative County** is a creation of the Local Government Act of 1888. As has been already

mentioned the administrative and geographical counties do not correspond. For the purposes of administration the three ridings of Yorkshire and the three parts of Lincolnshire have each been treated as a separate county, while Suffolk and Sussex have each been divided into two. The Isle of Wight, the Soke of Peterborough and the Isle of Ely have councils of their own, while the Scilly Isles are separated from Cornwall with an independent council which is in form, although not technically in name, a county council. The administrative County of London brings up the total of separate administrative counties, each with a council of its own, to sixty-three.

Certain boroughs are withdrawn from the jurisdiction of the administrative county and are called county boroughs. These exercise through their councils, which do not differ from those of other boroughs, the powers of local government enjoyed by an administrative county. Before 1888 there were nineteen boroughs which had all the organisation of a county for justice and other purposes and were known as counties of cities or counties of towns. A number of these, together with other boroughs which had a population of at least 50,000, were named in the Act of 1888 as county boroughs. Provision was made for the increase of their number as other boroughs attained a like population. The original number of sixty-one has now risen to sixty-nine. Some of the old "counties of towns," such as Poole, were not made county boroughs, and while retaining their organisation as counties for the purposes of justice are now merged for administrative purposes in the administrative county in which they are geographically situated.

§ 150. **The County Council.**—The administrative and financial business of each administrative county is entrusted to a county council, consisting of a chairman,

aldermen and councillors. In a county borough the town council has the powers, duties and liabilities of a county council.

For the purposes of representation every administrative county is divided into districts, each returning one county councillor. The municipal boroughs within its area, other than those which are county boroughs, return one or more councillors if they are large enough. The number of members depends on the size of the county and varies from 28 for Rutland to 140 for Lancashire. The councillors are elected by the Local Government electors for a period of three years and all retire together.

The aldermen are elected by the councillors for six years, one-half retiring every three years. In number they are one-third of the councillors, although in London the proportion is one-sixth. Their presence on the council is due to the desire to give some measure of continuity in its composition.

The chairman is elected by the council, and presides over its meetings. During his tenure of office he is *ex officio* a justice of the peace for the county.

In London two councillors are elected for each of the sixty parliamentary divisions other than the City of London, while the latter returns four.

Ministers of religion of all denominations, and women, whether married or single, may be members of a council. No person holding a paid office under the council, or being interested in any contract with the council, can become a member. There are also certain other disqualifications similar to those obtaining for parliamentary elections, such as bankruptcy and conviction for felony. Peers owning property in the county can however be members.

The Representation of the People Act 1918 made sweeping changes in the qualification of local government

electors, and established a uniform franchise for town and county. The franchise is given to any man who has, for the qualifying period of six months, occupied jointly or severally, as owner or tenant, land or premises within the electoral area; lodgers are recognised as tenants where they occupy unfurnished rooms. A woman can vote, either if she occupies land or premises within the division or if she is the wife of an elector, provided in the latter case that she has attained the age of thirty. All elections are held by ballot on the same day, and a voter can vote in only one electoral division of a county.

§ 151. **The County District** is a creation of the Local Government Act 1894, and stands midway between the parish and the county. These districts are either rural or urban, the latter comprising municipal boroughs and urban districts proper. This division of the county into districts was based on three classes of areas, the municipal borough, the sanitary district, and the poor-law union. Urban and rural sanitary districts had been created in 1872 as units for sanitary administration, but their boundaries had been fixed without relation to the areas of the poor-law unions or, in some cases, to those of the counties There was in consequence a good deal of overlapping, and considerable alteration of boundaries had to be effected to secure that the whole of each parish should be within the same district, and the whole of each district within the same county. Each municipal borough and urban sanitary district existing in 1894 became an urban county district. That part of a poor-law union which was outside any urban sanitary district became a rural county district, and this applied even if the whole of the poor-law union was outside, provided in both cases that the new district was wholly within a county. If a former rural sanitary district cut a county boundary each part became a rural

county district, except that if one of the parts was so small as not to elect five district councillors it merged in a neighbouring rural district in the same county. Elaborate powers for the revision of boundaries were given to the county councils and the then Local Government Board and have been freely exercised. The powers of the latter—now the Ministry of Health—also extend to the alteration of the boundaries of municipal boroughs. London is divided into twenty-eight Metropolitan boroughs.

§ 152. **Rural and Urban District Councils** are the authorities for Local Government within rural districts and urban districts other than municipal boroughs. Each council consists of a chairman and councillors. The councillors are elected by the Local Government electors. The number of councillors for each parish or other area electing guardians in a rural district was made the same as the number of guardians elected before 1894. In urban districts the councillors are either elected by the district as a whole, or, where the district is divided into wards, by the separate wards. The inspectors of the Ministry of Health are entitled to attend and to speak, although not to vote, at council meetings, if so desired by the Board.

The chairman is elected by the council, and is *ex officio* a justice of the peace for the county.

The councillors are elected for three years, one-third going out of office on the fifteenth of April in each year. This device preserves a certain amount of continuity in the district council, just as the appointment of aldermen preserves it for the county council. But the latter body has power to provide that all the district councillors shall retire simultaneously. A district councillor vacates his seat by six months' absence from meetings unless he has some good reason for his absence.

§ 153. **The Municipal Borough** is a town which has

received a charter of incorporation from the Crown. Its legal definition is "any place for the time being subject to the Municipal Corporations Act 1882." The Corporation of a borough consists of the Mayor, Aldermen, and burgesses, the latter being known as citizens in the case of a city. A borough is governed by a Town Council, which is a body distinct and separate from the Corporation.

There are a number of different kinds of boroughs, but all have the same form of government. The differences arise in the powers of administration which are exercised by the Town Council, and in the organisation of justice within the borough boundaries. The principal distinction is between county and non-county boroughs. The former are outside the area of the administrative county, and form administrative counties themselves. The latter are, to a varying degree, subordinate to an administrative county. Boroughs may again be divided into those with more and those with less than 10,000 inhabitants. The importance of this division will be seen when the powers of boroughs are considered in the next chapter.

It may be noted that some boroughs are counties of cities or counties of towns. Some have a separate commission of the peace, or a separate court of quarter sessions, or both, and some return a member to Parliament. Again, in some the head of the Corporation is known as the Lord Mayor.

§ 154. **The Town Council** is the governing body of a borough. It consists of the Mayor, Aldermen, and Councillors. The latter are elected by the Local Government electors either as a whole or in wards, and their number varies according to the size of the borough. The franchise is now the same for borough and county elections. The councillors hold office for three years and retire in thirds; new elections are held on the 1st of November in every year. The aldermen are elected by the councillors, to whom

they are in the proportion of one to three. They hold office for six years and half retire every third year. The only difference between them and councillors, apart from their tenure of office, is that they act as returning officers for borough elections where the borough is divided into wards.

The mayor is elected by the council for one year and may be re-elected. He need not previously have been a member of the council. He acts as chairman of the council and is the official head of the corporation. He dispenses the borough hospitality, and is *ex officio* a member of all committees, a justice of the peace and chairman of the borough bench. He remains a justice of the peace for the year following his mayoralty.

A woman, whether married or single, may now fill the position of councillor, alderman or mayor, and in the last case will become a justice of the peace. Absence from the borough for two months in the case of the mayor, or for six months in the case of an alderman or councillor, vacates his or her seat, but illness affords a valid excuse.

§ 155. **The Parish** is the unit of Local Government and originally comprised the sphere of the spiritual labours of a priest. Parishes differed widely in size owing to the distribution of population. Gradually they acquired a civil as well as an ecclesiastical status, but until the beginning of the last century the areas within which the two functions were exercised remained the same. In the nineteenth century, however, the altered conditions necessitated considerable changes in the boundaries and areas of the parishes. But unfortunately the alterations for civil purposes were carried out by one series of Acts known as the Divided Parishes Acts, and those for ecclesiastical purposes by another series known as the Church Building Acts and the New Parishes Acts. As these two series of Acts were passed without any reference the one to the other, the

consequence was that in 1894 only about one-third of the civil and ecclesiastical parishes coincided. Further confusion was caused by the fact that some of the civil parishes were subdivided for the purpose of levying the poor-rate. The Local Government Act of 1894 adopted these poor law parishes for the purpose of creating local authorities, and the definition of a parish to-day is "a place for which a separate poor-rate is or can be made, or a separate overseer is or can be appointed."

As has been previously stated, it was only the rural parishes that were given a fresh local organisation by the Act of 1894. That Act found many parishes situated partly in urban and partly in rural districts and in some cases in more than one county. It provided that the various parts should become fresh parishes, so that no parish should be within more than one county district. Boundaries were greatly altered and simplified under the provisions of the Act, but the greatest divergence still remains between individual parishes. They vary in area from 50 to over 10,000 acres, and in population from none to over 300,000.

§ 156. **Parish Meetings and Councils.**—The urban parish may be disregarded for local government purposes other than those of poor relief. Its "vestry" still appoints two overseers of the poor unless this power, as is frequently the case, has been transferred to the urban district council.

In every rural parish there is a "parish meeting." This is an assembly of the Local Government electors of the parish. It is thus the most elementary and democratic form of Local Government existing in the kingdom. It meets at least once a year and cannot be held before six o'clock in the evening, a provision which is of importance to the labourer.

In all parishes with at least 300 inhabitants there must also be a "parish council." In parishes where the number

of inhabitants is between 100 and 300 the county council must establish a "parish council" if the parish meeting so desires, and where the population is below 100 it may establish one if it thinks fit. Where, however, a rural parish is co-extensive with a rural district the district council acts as a parish council also.

A parish council consists of a chairman and from five to fifteen councillors. The councillors, who must be Local Government electors or others resident for twelve months within three miles of the parish, are elected for three years from the 15th April by the parish meeting at its ordinary assembly. Voting is by show of hands, but the chairman or five electors can cause a poll to be taken by ballot. The chairman may be chosen from outside the council, and women are eligible as electors and members. A parish councillor vacates his seat by six months' absence from meetings unless he has a good reason for such absence.

Where there is no parish council the parish meeting must meet at least twice a year. Further meetings may be called at any time by the chairman or any six electors. Every question is in the first instance decided by a majority vote. It chooses a chairman, and can appoint a committee to act for it, subject to its approval, in matters which it thinks are best conducted thus.

§ 157. **The Poor-Law Union** is a creation of the Poor-Law Amendment Act of 1834. Before the dissolution of the monasteries in the time of Henry VIII. the relief of the poor had been their care. After that dissolution it became needful to make provision for the "necessary relief of the poor," and the Act of Elizabeth, 1601, imposed that duty on the parish, providing that the churchwardens should be overseers for the purpose, and that the necessary funds should be provided by the occupiers. A subsequent Act in 1662 required each parish to maintain its own poor,

and laid the foundation for the elaborate law of settlement obtaining at the present day. Unscientific experiments and local mismanagement had, by 1834, produced a situation in poor law administration which demanded immediate reform. Commissioners were appointed, and in a remarkably short space of time produced a most able report, on which the Act of 1834 was based, and which still remains the foundation of our present system.

The Act of 1834 provided for the combination of parishes into unions. Convenience was made the sole guide in carrying out this combination, and no reference was made to other local areas. In consequence the unions were frequently situated in several counties and great disparities as to area and population existed. Many alterations of boundaries have been effected in various ways, but more than one quarter of the unions still extend into two or more counties.

§ 158. **The Board of Guardians** is the governing body of the poor-law union. A distinction exists between urban and rural unions. In a rural union, and also in that part of a mixed union which is in a rural district, the rural district councillors for the various parishes and other election districts are the guardians. The functions are different, but one election serves for the two. In urban unions and those parts of mixed unions which are situated in an urban district, however, a separate election is held. The electors are the Local Government electors, and women may be guardians. Indeed there are a large number of lady guardians whose work, especially among women paupers, has largely contributed to the efficacy of administration. A guardian vacates his seat by six months' non-attendance at the meetings of the board unless the absence is caused by illness or other good ground. The new Ministry of Health may cause its inspectors to attend meetings of the

boards of guardians in their district. They may speak but not vote.

Every board of guardians may elect a chairman and vice-chairman from outside its own body, and may also co-opt two other persons, but all must be qualified to be guardians of the particular union. The board is elected for three years, and the guardians retire in thirds, but the county council on the board's application may provide for all to retire together. There are now no longer any *ex officio* guardians.

§ 159. **The Metropolis** forms a separate administrative county by itself. The chief administrative body is the London County Council, but the Corporation of the City of London holds a privileged position. The history of London can be traced back to Roman times. The strategical position which it geographically occupies on the chief English river, and on the historical route for communication and trade with the Continent has largely induced its extraordinary growth. Originally the outpost of civilisation, to which were directed the two main streams of European thought and commerce from the Teutonic and Romance nations after their juncture at the narrow straits of Dover, it is now practically the centre of the civilised world. Its history has been long and varied. At many of the greatest crises in English history it has played no unimportant part. Its citizens have always been able to make their power felt, and have led the way for other towns in the acquisition of self-government. The privileged position of its corporation to-day, still surviving unreformed, is a witness to its power and influence.

The government of the City of London is in the hands of a Lord Mayor, Aldermen, and Councillors. It is divided into wards, and the electors, who need not be citizens, must have certain property qualifications. The councillors and

aldermen are elected for the various wards. There are three assemblies. The Court of Common Hall, consisting of all the liverymen, *i.e.* members of the great city companies, meets twice a year, and nominates two aldermen for the office of Lord Mayor. It also elects the Sheriffs. The Court of Common Council consists of the aldermen and councillors. Among other functions it has all the powers of an urban district council. The Court of Aldermen elects the Lord Mayor. The latter is the chief magistrate and dispenser of hospitality for the City: he presides over the three city assemblies, lives at the Mansion House, and has a salary of £10,000, which is invariably insufficient to meet his expenditure.

The London Government Act of 1899 created twenty-eight Metropolitan borough councils, and swept away a large number of small local authorities which then existed. For this purpose the administrative county, excluding the City, was divided into Metropolitan boroughs. Each council consists of a Mayor, Aldermen and Councillors. Each borough is divided into wards, and the electors are the Local Government electors within the area. The councillors are elected for three years, and retire in thirds unless the Ministry of Health, at the request of the Council, provides for their simultaneous retirement. The councillors elect the aldermen, to whom they are in the proportion of six to one. The council elects the mayor. The total number of aldermen and councillors may not exceed seventy, and the elections are held on 1st November. Women are now entitled to be members of the council.

There are certain other bodies which have administrative functions in London. The Metropolitan Water Board was formed in 1902 to take over the undertakings of the various water companies within an area of 620 miles immediately surrounding London. It is mainly composed

of representatives from the London County Council, the Metropolitan borough councils, and the councils of the various local authorities in the surrounding district.

The Metropolitan Asylums Board was created in 1867, and is composed of representatives from the various Boards of Guardians in the Metropolitan district, together with eighteen members nominated by the Ministry of Health.

The Home Office is the authority for the Metropolitan Police, and the City Corporation for that of the City. The Thames and the Lee are managed by Conservancy Boards.

By an Act of 1908 a new authority was created for the Port of London. It is called the Port of London Authority and consists of a chairman, vice-chairman, and 28 members. Of these 18 are elected by payers of dues, wharfingers, and owners of river craft, while 10 are appointed by the following bodies:—Admiralty, Board of Trade, London County Council, City Corporation, and Trinity House.

CHAPTER XVI.

THE POWERS AND DUTIES OF LOCAL AUTHORITIES.

§ 160. **General Organisation of Local Administration.**—In the last chapter the nature and composition of the various bodies to which the duty of local administration is entrusted have been considered. The functions of these bodies are two; they must first decide what to do and then do it. The three principal organs by which these functions are carried out are the council, the committee and the official staff. The council itself decides all matters of general policy and importance, but in the majority of cases it would be obviously impossible for it to attend to all matters of detail. The work of administration is so varied that it is necessary to form committees to whom different classes of matters may be delegated. These committees act for the parent council, subject to a varying amount of supervision. Councils and committees, again, can only deliberate and decide on the course of action to be pursued. Their decisions must be carried out by a permanent staff acting under their direction. This staff varies according to individual needs, but certain officers must be appointed by certain classes of bodies.

Further, councils have a general power to regulate their own methods of procedure. The legislature has imposed in certain cases the necessity of holding certain meetings, and forming certain committees, and has laid down what

powers are not capable of delegation; but, subject to these statutory limitations, the organs of Local Government have a perfectly free hand in the organisation of their executive, and a comparison of different bodies of equal powers shows that this capacity for adjustment to existing conditions is wisely exercised. To this general statement there is one exception. The poor-law guardians are shut in on every side by orders of the Ministry of Health intended to produce a uniformity of administration in pauper relief.

By an Act of 1908 the Press has acquired the right to attend meetings of local authorities. Its representatives may, however, be excluded by a special resolution where the local authority considers that course to be for the public benefit.

§ 161. **County Council Committees.**—A County Council has a large area to administer. Wherever its meetings are held some of its members will find it difficult and expensive to attend. Accordingly its powers are largely delegated to committees, of which it may create as many as it pleases. The whole council need meet only four times a year, and committees are often divided into local sub-committees. A County Council must appoint committees for finance, public health and housing, education, distress, old age pensions, shops, naval and military war pensions, maternity and child welfare, land drainage and agriculture. The last committee must appoint two sub-committees, one for small holdings and allotments, the other for diseases of animals. The Council must combine with quarter sessions in appointing two joint committees. One of these is the "visiting committee" for asylums, on which private benefactors may be represented, and to which any county borough, if contributing to the cost of the county asylum, may appoint two members. The other is the "watch committee," which controls the county police. The county council has

no control whatever over this committee, but must provide the money necessary for its expenditure. Nor do the acts of the visiting committee require the approval of the council, although an annual report of its proceedings must be presented. County councils have power to combine either among themselves or with any court of quarter sessions to appoint a joint committee "for any purpose in respect of which they are jointly interested." A county council may delegate certain powers, such as the licensing of stage plays, to the justices, and may also delegate powers to a district council; but cannot delegate to anyone the power of making a rate.

The council itself exercises a general control over administration and decides matters of general policy. Its committees, however, usually have a free hand apart from being restricted from borrowing money or making a rate. The council lays down the powers and constitution of the committees, and its chairman and vice-chairman are members of them all. The committees themselves act through local and particular sub-committees. Their minutes are open to the inspection of all members of the council, and they report their proceedings to the council, although its approval or consent is not necessary for them to act. All important recommendations of a committee are placed before the council itself and decided by that body.

To the "finance committee" is entrusted the control of the council's expenditure. The council itself cannot order a single payment except upon a recommendation of the finance committee, and "any costs, debt or liability exceeding fifty pounds shall not be incurred except upon a resolution of the council passed on an estimate submitted by the finance committee." This body therefore exercises a continuous control over expenditure and enables the

financial policy of the council to be effectively carried out.

The following list of committees which are usually appointed is taken from *Local Government in England*, a standard work by Redlich and Hirst: "Main roads and bridges, general purposes, local government, sanitary or public health, contagious diseases (animals), asylums, allotments, county buildings, industrial schools, reformatories, county assessment, parliamentary."

§ 162. **The Powers of the County Council.**—Before the passing of the Local Government Act of 1888 both the administrative and the judicial business of the county was in the hands of the justices of the peace in quarter sessions. That Act transferred "the administrative business of the justices of the county in quarter sessions assembled" to the county council, but the granting of licences for the sale of intoxicating liquors is still in the hands of the justices. A categorical list of the business transferred is given under sixteen headings by the Act, which also provides that the Local Government Board—now the Ministry of Health—may transfer any other powers of the justices to the council which are similar to those already transferred. Besides this the county council has been made the authority to administer certain Acts, and the Ministry of Health has the power to delegate to it by means of Provisional Orders any administrative duties arising within the country which are undertaken by the Central Government. This power has not yet been exercised. The Local Government Act of 1894 has also given it certain powers of supervision and control over other local authorities. These various powers may best be summarised as follows:—

(1) It makes bye-laws "for the good rule and government" of the county, which are enforced by fines.

(2) It supervises the work of rural and urban district

councils: it may alter their boundaries and areas, and, if they neglect their duties, it may do their work for them. It holds local enquiries, can create and dissolve parish councils, and generally disposes of difficulties arising in local administration.

(3) It licenses places for music and dancing, racecourses and theatres, and registers dissenting chapels and the rules of certain scientific societies.

(4) It provides and maintains the buildings necessary for county business, including assize courts and accommodation for the quarter sessions and the justices.

(5) It provides, maintains, and visits pauper lunatic asylums, reformatories, industrial schools, inebriate reformatories and isolation hospitals for infectious diseases, and is the authority for old age pensions.

(6) It executes the Acts relating to the contagious diseases of animals, destructive insects, fish conservancy, wild birds, weights and measures, gas meters, explosives and river pollution.

(7) It appoints its executive officers and staff. The chief officers are the clerk, who is also, except in London, clerk of the peace for the county, the county treasurer, the county surveyors and coroners, public analysts, an agricultural analyst, an official sampler, a director of education and generally a medical officer.

(8) It repairs main roads and bridges, but may arrange to pay another local authority to do the work. It determines what are main roads, and may contribute to the cost of repairing any highway or footpath in the county.

(9) It provides small holdings and allotments, and may purchase land, using compulsion where this is necessary, and may borrow money to pay for it.

(10) Through the joint committee of council and justices it controls the county police, but in the Metropolis the

police are directly under the control of the Home Secretary.

(11) It can take all necessary legal proceedings whereby to oppose private bills in Parliament, but until 1903 was unable itself to promote a bill. The London County Council, however, has always had this latter power.

(12) It appoints representatives upon the County Insurance Committee under the National Insurance Acts.

(13) It supervises the execution of the Maternity and Child Welfare Act, 1918.

(14) It can supply and aid higher education and is the elementary education authority for the county.

(15) It makes a rate, and can borrow money with the consent of the Ministry of Health. The purposes for which it may borrow are the consolidation of its debt, the purchase of necessary land and the execution of any permanent work; but its total debt may not exceed one-tenth of the annual rateable value of property in the county unless it obtains parliamentary confirmation of a Provisional Order to that effect.

§ 163. **County Finance.**—Apart from certain contributions from the Imperial Exchequer the principal source of income of the county council is the proceeds of the county rate. At the beginning of each local financial year an estimate of the receipts and expenses for the year is submitted and passed, although this may be revised at the end of six months. The amount of the county rate is determined by this estimate. Some of the expenses of the council are spread over the whole county, while from others certain parts of the county are exempt. Care has to be taken in collecting the rate to allow for these exemptions. In particular the police rate is kept separate, although it appears on the same demand note. The Exchequer contributions are ear-marked for particular purposes. These

various sources of income necessitate somewhat elaborate accounts, which are kept by the county treasurer. He makes all payments out of the county fund, and except for the specific requirement of an Act of Parliament or the order of a court will not act unless he receives an order signed by three members of the financial committee. All cheques must be countersigned by the clerk of the council. Lastly, the county council accounts are subjected every year to a searching audit by a district auditor appointed by the Ministry of Health. He has power to disallow amounts improperly paid, and to surcharge them against the persons authorising the payment. The Ministry of Health usually upholds the disallowance, but remits the surcharge.

§ 164. **The Working of District Councils.**—As in the case of the county so also in that of the urban or rural district, the work of local administration is performed by the council, committees and staff. In the main the organisation of the two kinds of councils is the same, but minor differences exist which are necessitated by the difference in their work. The term urban district strictly includes a borough, but here and in the next five paragraphs it is confined to those urban districts which are not boroughs.

The councils largely do their work through committees, which may be appointed "for the exercise of any powers which in the opinion of the council can be exercised by committees." The committees may contain persons who are not members of the council, but, unlike the committees of a county council, their acts must be submitted to the district council for approval. An exception to this rule occurs, however, in a committee appointed for any sanitary or highway business, which can be given full powers except as to loans, rates and contracts. Another exceptional com-

mittee is the parochial committee of a rural district council, which may incur expenses to a prescribed amount and may co-opt only persons who are members of the parish council. The district council may indeed appoint the latter body to act as its parochial committee. Joint committees may be formed by district and parish councils "for any purpose in respect of which they are jointly interested."

Every urban district council must appoint as officers a "medical officer of health, surveyor, inspector of nuisances, clerk, and treasurer," besides their assistants and clerks. With the exception of the surveyor, similar officers are appointed in rural districts, but in the latter case the Ministry of Health must approve of the salaries of clerk and treasurer. Half the salaries of the medical officer of health and the inspector of nuisances will be paid out of the Imperial Exchequer if the Ministry of Health is allowed to supervise the appointments.

The councils determine their own method of procedure, which is inclined to differ according to the size of the district, especially as to committees. In small councils a committee is frequently composed of all the members. Minutes of all meetings, both of council and committees, must be kept, and the latter must be reconstituted every year.

§ 165. **The Powers of District Councils.**—Urban district councils are more important bodies than rural district councils, and have greater powers. This is especially the case in sanitary administration, education, allotments and the power of levying rates, while a further distinction arises from the fact that rural district councillors are also guardians while urban district councillors are not Very frequently, however, the Ministry of Health confers the powers of an urban district council on a rural district council either for the whole or for some part of its district The powers of district councils may be divided

into three classes, viz. sanitary and public health, highway and miscellaneous. For the due carrying out of all these duties district councils have the power of making bye-laws, but these require the confirmation of the Ministry of Health and must comply with the requirements of the Acts under which they are made. The Ministry of Health issues model series of bye-laws, which are generally adopted.

§ 166. **Public Health Powers of District Councils.**—The Public Health Act of 1875 is the great code of sanitary legislation, but many Acts since that date have added to the powers of a district council. All sewers vest in the district council, and must be maintained by it in proper repair. It is generally responsible for the sewerage and drainage of its district, and can enforce the provision of proper sanitary accommodation. It may provide for the removal of house refuse and the cleaning and watering of streets, and must do so if required by the Ministry of Health. District councils have extensive powers of providing a water supply. Urban councils alone are able to provide baths and wash-houses, while they are compelled to maintain the machinery necessary to ensure an efficient supply of water in case of fire. District councils may take proceedings to prevent the pollution of rivers and to close any well, etc., the water of which is injurious to health. For sewerage, water supply, and like matters several districts may be combined by Provisional Order of the Ministry of Health, which requires parliamentary confirmation. The councils also appoint local committees to administer the Maternity and Child Welfare Act, 1918.

District councils have extensive powers for the prevention of and control over illness and disease. In the first place each district is inspected by the inspectors of nuisances with a view to the discovery of nuisances which are

detrimental to the health, comfort and well-being of the community. If any such are found notice is given to the occupier of the premises, and if he refuses to do away with the nuisance he can be compelled to do so by the justices. Food exposed for sale can be condemned and destroyed if unfit for human consumption. Urban councils may provide slaughterhouses, and must register those existing. All councils have certain powers as to adulteration and dairy inspection.

Coming now to the actual dealing with disease, the occurrence of all infectious disease must be notified to the medical officer of health. Stringent powers are given to the councils to prevent the spread of infectious diseases. They can require premises to be disinfected and bedding burnt. In the case of an epidemic the Ministry of Health can require house-to-house visitation and the provision of medical aid, and, generally, can take measures to prevent the spread of the disease. Its orders are enforced by the district councils. These bodies may also provide hospitals, mortuaries and cemeteries.

§ 167. **Highway Powers of District Councils.**—The district councils are the highway authorities for their districts, and must keep all highways in repair except main roads, which are repairable by the county council. An urban council can also compel the latter body to hand over main roads in its district to its care within one year of their creation, and the county council may at its option hand over main roads in a rural district to the rural council; in both cases the county council must pay for the cost of repair. An urban council has power to compel the proper making up of any street in private hands. It may also provide for lighting its thoroughfares. District councils must protect all public rights of way. Urban councils have the power of constructing and working tramways, if

they can obtain a Provisional Order conferring the necessary authority from the Electricity Commissioners under the Ministry of Transport and get it confirmed by Parliament. They can also purchase private undertakings of this character after twenty-one years. Both rural and urban councils may construct and work light railways, which are steam or electric tramways using the ordinary highways. The necessary authorisation must be obtained from the Light Railway Commissioners under the Ministry of Transport.

§ 168. **Miscellaneous Powers of District Councils.**—Urban councils have powers for the demolition of insanitary areas and dwelling-houses, and may make schemes to replace them. Both urban and rural councils may provide dwellings for the working classes, and urban councils may also provide allotments. The powers of rural councils as to allotments have recently been transferred to the parish councils.

With the licence of the Board of Trade district councils may provide electricity. They must register common lodging-houses, and license pawnbrokers and hackney carriages. They are the authorities for fairs, infant life protection, canal boats, shop hours, notification of births, and factories and workshops. Urban councils may provide museums, gymnasiums, and public parks, clocks and libraries. If they have more than 20,000 inhabitants they are the authorities for elementary education and for old age pensions. They may also promote private bills in Parliament, and by this means the larger urban councils have obtained a number of miscellaneous special powers.

§ 169. **District Council Finance.**—Urban and rural district councils have different methods of raising the funds necessary to meet their expenditure. An urban council levies a general district rate on all property assessable for the relief of the poor, but it may divide the district into parts and make a separate assessment on

each part. In the case of improvements benefiting a few individuals, it may levy a private improvement rate on the persons benefited by which they will repay the expenditure with interest in a period of thirty years. In rural districts the council does not levy a rate, but its expenses are met out of a fund raised from the poor rate of the various parishes in the district. Its expenses are divided into general expenses and special expenses, the latter being those which specially benefit a particular area; these are borne by the separate areas interested. The rural council issues precepts to the various overseers to raise the necessary funds; this they do, paying the amount for general expenses out of the proceeds of the poor rate, and levying a separate rate for the special expenses. Besides the proceeds of the rates the income of a district council includes contributions from the Imperial Exchequer, which are paid through the county council, and certain receipts from fees and fines.

District councils may borrow money for permanent works with the consent of the Ministry of Health. The money is repayable by instalments extending over a maximum of sixty years (for housing eighty years). This power is largely resorted to.

The accounts of an urban council are made up annually, and those of a rural council half-yearly. They are subject to a searching audit by a district auditor in the same way that the accounts of a county council are.

§ 170. **The Working of Borough Councils.**—Although there is considerable diversity in the powers of different boroughs, there is an uniform method of administering their affairs. As with other local authorities there is the threefold combination of council, committees and staff. The council may appoint whatever committees it thinks necessary. Where a borough is the authority for police,

education, old age pensions, diseases of animals, or lunacy within its district, it must appoint committees for such of these purposes as it administers. These committees must be chosen from the actual members of the council and their acts must be submitted to it for approval. The committees on education and old age pensions are, however, exceptions to these rules: both must contain co-opted members, the education committee including women, while neither committee need submit its acts to the council. The council settles all its own procedure and the method in which the submission to itself of the proceedings of its committees is to be made.

The principal officer of the council is the Town Clerk. Although he can be dismissed at the pleasure of the council his office is usually a permanent one, and the experience he thus gains enables him to influence largely the course of administration in the borough and to preserve its continuity. He acts as secretary to the council, advises them on any legal points which arise and is the custodian of the borough records and documents. Besides the town clerk, the council must also appoint a treasurer and "such other officers as have been usually appointed in the borough or as the council thinks necessary." These will vary in accordance with the size and importance of the borough, but will always include a medical officer of health and an inspector of nuisances.

The council must hold four quarterly meetings during the year for general business, one being at noon on the ninth of November. The mayor presides, minutes are kept, and one-third of the whole council forms a quorum.

§ 171. **The Powers of the Borough Council.**—These vary widely in different boroughs, but all councils have the power to make bye-laws for the good rule and government of the borough. These must be submitted to the Ministry

of Health, or in some cases to the Home Secretary, and must also conform to certain other conditions. Every town council, again, is the urban district council for its borough, and controls and manages the municipal property. It may build a town hall and other necessary municipal buildings, and buy land to the extent of five acres. Unless empowered by some Act of Parliament, it may not sell or mortgage its property without the consent of the Treasury, and its powers of granting leases of such property are strictly limited.

If a borough is a county borough its council has nearly all the same powers as a county council, but it appoints the coroner only where his district lies wholly within the borough.

The councils of boroughs with 10,000 inhabitants or more are the authorities for elementary education unless this power has been surrendered to the county councils. They also act as a general rule in the administration of the Acts relating to the sale of food and drugs, the contagious diseases of animals, destructive insects, and weights and measures. Such boroughs control their own police if they had the requisite population in 1881; but new boroughs must possess 20,000 inhabitants to have this privilege, as also to be authorities for old age pensions. Boroughs with 50,000 inhabitants appoint representatives on local National Health Insurance Committees and can form local committees under the Naval and Military War Pensions' Acts 1915-21. They have distress committees and can use the produce of a halfpenny rate to relieve unemployment in certain ways. Those with 10,000 inhabitants can obtain this power with the consent of the Ministry of Health.

All borough councils can increase their powers by passing resolutions to put in force what are known as the Adoptive Acts; these relate to light railways, public

libraries and shop hours, etc. They may promote private bills in Parliament, and thus acquire further powers.

§ 172. **Borough Finance.**—The income of a borough is paid into the borough fund. It is derived from fees, receipts from corporate property, the borough rate and contributions from the Exchequer. In the case of non-county boroughs the contributions from the Exchequer come through the county council, which has to pay half the cost of police pay and clothing where a separate police force is maintained, and also half the salaries of the medical officer of health and inspector of nuisances. If these boroughs increase the cost of their police force it leaves the county councils with so much the less for their own purposes, while in county boroughs this contribution to the cost of the police resolves itself into a mere matter of bookkeeping. A county borough must pay the total cost of its police from one source or another, and it makes no practical difference against which part of its income that expense is charged. The same remark may be made with regard to the county funds.

Every borough has the power of levying a borough rate, which is collected by the overseers for the various parishes within the borough. It has also the same powers as an urban district council of levying a general district rate and private improvement rates. Payments are made by the treasurer out of the borough fund upon an order of the council signed by three of its members and countersigned by the town clerk. Certain salaries are practically the only payments that may be made without such an order.

A borough council can borrow money for permanent improvements. This is repayable by instalments and charged on the rates. Generally the consent of some Government department is necessary for the purpose.

The provisions as to audit in a borough are not so

satisfactory as in other local areas. Instead of the Ministry of Health's audit the borough accounts are reviewed by the borough auditors. Two of these are elected by the Local Government electors and the third is nominated by the mayor from among the members of the council. None of these auditors need have any professional qualification for the office. The accounts are made up and audited every half-year, and a yearly return of receipts and expenditure is made to the Ministry of Health.

§ 173. **Parish Councils and Meetings** are the authorities for the parish. As a general rule their activity is not great, and this is largely due to the small amount which they can spend. The parish council may appoint committees and co-opt persons on them in the same way that a district council can. It may also appoint members to joint committees of itself and other parish or district councils. The parish meeting may appoint a committee to act for it subject to its approval in matters which it thinks are best conducted thus, and may also appoint persons to manage its allotments. The parish property is vested in the council, or, where there is no council, in the chairman of the parish meeting and the overseers.

These assemblies have taken over the former civil powers of the vestry and so they appoint the overseers. A parish council usually appoints a clerk and a treasurer from among its own members without salary. It may provide allotments, and on their acceptance by the parish meeting may administer the Adoptive Acts for lighting and watching, baths and washhouses, burial grounds, public improvements, and lighting. It can provide parish offices and books, fire-engines, and recreation grounds. It can utilise wells and deal with ponds, etc., prejudicial to health. It may act as the parochial committee of a rural district council. It has certain powers as to non-ecclesiastical

parochial charities, and may, under certain restrictions, borrow from the county council to purchase land for authorised purposes, to carry out the Adoptive Acts or for permanent works authorised by the county council and the Ministry of Health.

Both parish councils and parish meetings may complain to the county council of the neglect of a rural district council, and have extensive powers as to the maintenance of footpaths. They are also represented on Boards of managers for elementary schools. Where there is a parish council the duties of the parish meeting are mainly to act as a restraining force, as will be seen in the next paragraph.

§ 174. **Parish Finance.**—Parish councils and, where there is none, parish meetings may spend an amount equivalent to a rate of sixpence in the pound, but in the case of the former the consent of the parish meeting is necessary if the rate is above threepence in the pound. In the case of parish councils this is exclusive of the rates which may be raised under the Adoptive Acts.

A parish council may only borrow up to half the assessable value of the parish and then only under severe restrictions. It must first get the consent of the parish meeting and the county council to the expenditure, and then the consent of the county council and the Ministry of Health to the loan.

The accounts of parish councils and meetings are made up and audited in the same way that those of district councils are, but in many cases no expenditure whatever is made, and in those cases where expenses are incurred the average revenue and expenditure are under thirty pounds.

§ 175. **The Working of the Board of Guardians.**—As with other local authorities there is the threefold combination of board, committees and staff. The chief committees are

the assessment committee, which must consist of from six to twelve persons, and the visiting committee. A district committee can be formed in any parish four miles away from the meeting place of the board, to consider applications for relief and report thereon to the board.

The union officers are appointed and their salaries are fixed by the board of guardians, subject to the approval of the Ministry of Health; nor can these officials be dismissed without the consent of the Ministry.

These union officials consist of a chief and other clerks, relieving officers who inquire into and report upon every application for relief, medical and vaccination officers, the workhouse staff, and any such other officers as the board of guardians deems necessary.

Unlike other authorities, a board of guardians may not determine its own procedure, but must act in accordance with the forms and methods laid down by the Ministry of Health. This body exercises by means of Orders what is practically legislative authority in the control of poor law administration. These Orders are either general or special, and may apply to all or one or more of the Boards as the Order specifies.

§ 176. **The Powers of the Board of Guardians.**—In administering poor relief the guardians are strictly bound by the various Orders of the Ministry of Health, whose inspectors have the right to attend their meetings. Their only freedom of action lies in deciding the nature of the relief to be granted in individual cases. Even here they are bound by one important limitation. They may not grant outdoor relief to able-bodied adults.

Poor relief is either outdoor or indoor. Outdoor relief may consist of money, gifts in kind such as food or clothing, medical assistance and burial in case of death. Indoor

relief is given in the workhouse, the infirmary, and the casual ward. Pauper lunatics are maintained in the county asylums. The relieving officer enquires into applications for relief, and has certain powers to order immediate relief in urgent cases. He attends the meetings of the guardians and carries out their instructions. If in need every person has a right to be taken into the workhouse of the union in which he is, until it can be shown that he is properly chargeable on another union. But outdoor relief cannot be demanded as a right.

Besides granting relief the board of guardians must see that the workhouse and infirmary are properly maintained. It is also the authority for the Vaccination Acts, the Infant Life Protection Act, and the registration of births, marriages, and deaths. It approves the valuation lists of the various parishes made by the overseers, and collects the local rates through the overseers.

§ 177. **Poor-Law Finance.**—The following is the procedure in raising the poor rate. The overseers of the various parishes prepare a valuation list, *i.e.* "a statement of the gross estimated and rateable value of all the rateable property in the parish." These valuation lists are then revised by the assessment committee of the board of guardians. This committee has power to hear and determine objections to the valuation, subject to an appeal to quarter sessions. The valuation lists after being settled are the basis on which the poor rate and other rates are levied. The guardians determine how much must be raised from the poor rate. They then calculate how much each parish ought to contribute as its proportion to the total. The next step is to direct an order to the overseers of the parish to raise this amount. The overseers then calculate how much in the pound, according to the valuation lists already prepared, will provide this amount and any

other amount required by the other local authorities. This is the assessment. The rate is then 'allowed" by two justices, after which demand notes are issued and the amounts assessed are collected.

The guardians may borrow money with the consent of the Ministry of Health for any permanent object such as a new workhouse. Their accounts are subject to a half-yearly audit by Ministry of Health officials.

§ 178. **Metropolitan Authorities.**—The governing body of the Metropolis before 1889 was the Metropolitan Board of Works which had been formed in 1855. Its duties were transferred to the London County Council, and this accounts in some measure for the extra powers which that body possesses beyond those of other county councils. Another reason for its greater activity is to be found in the vast population of London, while until 1903 the London County Council alone among county councils had the right to propose private bills to Parliament, and thus acquire special powers of its own. It is noteworthy, however, as testifying to its importance, that any bill "promoted by the London County Council containing power to raise money by the creation of stock, or on loan," must be introduced as a public bill.

The Corporation of the City of London is only partially subject to the London County Council. It maintains its own police, has the monopoly of all markets within seven miles of the city boundary, and is the sanitary authority for the port of London. It also administers a large amount of corporation property, and maintains several bridges across the Thames.

The powers of the Metropolitan boroughs, which were created in 1900, are rather more restricted than those of boroughs generally. Thus, in financial matters, they are compelled to appoint a finance committee with similar

powers and duties to those of the finance committee of a county council. Their accounts are also subject to a Ministry of Health audit like those of the county councils. They have no power over the police force, and are not the education authorities for their respective areas. They are also subject to considerable control from the London County Council and the Ministry of Health. The council of each borough, however, acts as the overseers of the various parishes within the borough, and appoints the assessment committee of any poor-law union within its boundary. It appoints a distress committee and can relieve unemployment to the extent of a half-penny rate. It has the power to co-opt persons to its library committee.

The duty of the Metropolitan Water Board is to supply pure and wholesome water within the limits of supply laid down by the Act of 1902, which created it. It took over the undertakings of the various water companies previously supplying the Metropolis, and paid their shareholders with stock specially created for the purpose. It apportions its total expenses among the various local authorities within its area according to their rateable value, and directs precepts to them to raise the amounts thus required. This is raised as a water rate. Its accounts must be kept and audited in the same way as those of a county council.

The Metropolitan Asylums Board provides hospitals for infectious diseases and asylums for imbeciles.

The Port of London Authority has jurisdiction over the Thames from Teddington to Sheppey. It has acquired the powers of the Thames Conservancy over the above area, as well as the duties of the Watermen's Company as to the licensing of craft and lightermen, and the government, inspection, and control of the latter. It can charge dues on all goods imported or exported, but must give no preference.

(very good book)

CHAPTER XVII.

M. Youssuf Bees

EDUCATION.

§ 179. **Historical.**—The activity of the State with regard to education, which is so marked a feature of the present day, is entirely a growth of the last century. Its first interference in the matter was in 1833, when it granted £20,000 for educational purposes. For purposes of administration this was divided between two societies which were then endeavouring to supply the educational needs of the country. The earlier and smaller society was founded by Joseph Lancaster in 1808, and received the name of "The British and Foreign School Society" in 1814. Its distinguishing feature consisted in the giving of Bible lessons without denominational teaching and the reception of children of all creeds. The other society was the outcome of the efforts of the Rev. Dr. Andrew Bell to counterbalance the influence of Lancaster and extend that of the Church of England. It was founded in 1811 and called "The National Society for Promoting the Education of the Poor in the Principles of the Established Church." It is more commonly known as "The National Society," and was an offshoot of the Society for Promoting Christian Knowledge, which was founded in 1698. The religious rivalry in education which was thus set up has continued down to the present day. From 1833 to 1870 the Government grants were gradually increased, but the voluntary principle remained intact. No State schools were set up.

The great Elementary Education Act of 1870 introduced by Mr. Forster is the foundation on which the present system is based. This Act recognised and aided the already existing voluntary schools, but as these were insufficient to provide for the needs of all the children, it directed that "there shall be provided for every school district a sufficient amount of accommodation in public elementary schools for all the children resident in that district, for whose elementary education efficient and suitable provision is not otherwise made." In other words, the State undertook the duty of seeing that every child could obtain a proper elementary education. For this purpose bodies elected *ad hoc* were created and were known as school boards.

In 1876 education was made compulsory, and it became the duty of every parent to see that his child received a proper elementary education. What is included in this term is now defined in a code issued by the Board of Education. The age of compulsory attendance for scholars was from five to fourteen. They might attend from three to sixteen, and on passing certain tests of efficiency might obtain partial or total exemption from school attendance after reaching the age of twelve, or eleven in agricultural districts.

In 1891 a further step was taken, and education was made free. Every school district was required to provide a sufficient number of free places for those requiring them.

§ 180. **The Position in 1902.**—Before the passing of the Elementary Education Act, 1902, there were two classes of elementary schools, the board schools and the voluntary schools. The board schools were maintained and controlled by the school boards, the voluntary schools by their managers. In the board schools religious teaching might

be given provided that it complied with the "Cowper-Temple" clause of the Education Act of 1870, that "no religious catechism or religious formulary which is distinctive of any particular denomination shall be taught in the school." In the voluntary schools was given such religious teaching as was laid down by the founders of the school. In both kinds of schools the religious instruction was subject to the "conscience clause," which permitted any parent to withdraw his child from the religious instruction where he had objections to it. All religious instruction had to be given at the beginning or end of school hours.

With regard to the cost of the education, both kinds of schools received contributions from the national funds. These grants were of a certain amount per child in average attendance, but the school had to attain a certain standard of efficiency. In some cases school fees were charged; where no fees were taken an extra grant of ten shillings a scholar was made. The remainder of the cost of education was defrayed in the case of board schools by a rate levied by the school board, and in the case of voluntary schools by voluntary contributions and the proceeds of any endowment. Under an Act of 1897 voluntary schools also received a grant-in-aid of five shillings per scholar in average attendance, and by another clause of the same Act, which extended a provision in the Act of 1870, special grants were made to school boards in needy districts. All schools were made subject to Government inspection as a condition of receiving any grant.

It will be seen, therefore, that the voluntary schools differed from the board schools in that, apart from the Government inspection, they were not subject to public control, while financially they were in a considerably worse position. As the standard of education rose the school boards were enabled to meet the extra cost in

the board schools by an increase in the rates, but the voluntary schools had to depend on further voluntary contributions. There is little wonder, therefore, that the financial strain was increasingly felt by the latter, and that while many board schools were maintained at a standard which considerably exceeded the minimum of efficiency required by the Government inspectors, most of the voluntary schools found considerable difficulty in attaining that necessary minimum. It was with a view, therefore, to relieve this financial need and to unify the standard of efficiency of the various schools that the Education Act of 1902 was passed.

§ 181. **The Education Act, 1902,** to a great extent assimilated voluntary schools to board schools. It also rechristened both classes, calling the former non-provided schools, and the latter provided schools. It abolished the old *ad hoc* authorities, and handed over their duties to certain of the existing local authorities. It co-ordinated elementary and secondary education. It determined the constitution of the body of managers of every elementary school, and provided for the representation of local authorities on such bodies. It placed the duty of maintenance of all schools, both provided and non-provided, on the local education authorities, but prevented any interference by them in the religious teaching given in non-provided schools. The system thus created, which was extended, with some modifications, to London in 1903, will be explained in the following paragraphs.

§ 182. **The Local Education Authorities.**—There are four classes of local education authorities for elementary education: county councils, the councils of county boroughs, the councils of other boroughs having a population of more than ten thousand inhabitants, and the councils of urban districts having a population of more than twenty thousand

inhabitants. The distinction as to population drawn between the last two of these classes seems a purely arbitrary one, but may, perhaps, be explained by the fact that in urban districts the population is likely to be more scattered than in boroughs. Both town councils and urban district councils may, however, surrender their powers to the county council, and the latter also has jurisdiction over all rural districts and over such boroughs and urban districts as do not possess the necessary numerical qualification.

For higher education the councils of counties and county boroughs are alone the authorities, but the councils of all other boroughs and urban districts may, to the extent of a penny rate, spend money in supplying or aiding the supply of such education. The London County Council is the sole education authority within the Metropolis.

§ 183. **The Education Committee.**—Every council which is a local education authority for elementary education must appoint an education committee. Except in the case of a county the majority of this committee must be members of and appointed by the council. Provision is also made for the appointment of women, and of "persons of experience in education, and of persons acquainted with the needs of the various kinds of schools in the area for which the council acts." These latter persons are usually appointed on the nomination or recommendation of bodies in the district concerned with education. Separate education committees may be appointed for different areas in a county, and joint committees may be formed by the combination of counties, boroughs and urban districts or parts thereof. The committee may appoint sub-committees consisting either wholly or partly of its own members.

All matters relating to the exercise of the powers of the council as to education are referred to this committee, with the usual exception against borrowing money or raising a

rate, but with these exceptions the council may delegate to the committee all its powers. The committee then reports to the council.

The Managers.—Each elementary school has a body of managers who generally supervise its working. The composition of this body varies according as the school is provided or non-provided. In a provided school four managers are appointed by the county council, and two by the council of the "minor local authority" in whose area the school is situated. In London, however, these proportions are reversed. Two-thirds of the managers are appointed by the council of the Metropolitan borough in which the school is situated, and one-third by the London County Council, while provision is made that at least one-third shall be women. The councils of boroughs and urban districts which are local education authorities may apparently act as their own managers if they think it desirable.

In non-provided schools provision is made for the appointment of four "foundation managers" under the provisions of the trust deed of the school. Two other managers are appointed by the local education authority where this is the council of a borough or urban district. But where the county council is the local education authority one manager is appointed by it and one by the "minor local authority." Provision is made for the grouping of several schools under one body of managers. The managers must hold a meeting at least once in every three months. Minutes must be kept, which are open to the inspection of the local education authority, and any two managers may convene a meeting.

§ 184. **The Working of the School.**—It is the duty of the local education authority to maintain and keep efficient its elementary schools. It must therefore furnish the

money for this purpose. In the case of provided schools it has complete control over the working, and the managers "deal with such matters relating to the management of the school, and subject to such conditions and restrictions, as the local education authority determine." With regard to religious teaching the position in such schools is exactly the same as it was in board schools before the passing of the Act of 1902.

For non-provided schools the arrangements are somewhat different. The local education authority maintains and keeps them efficient, but the managers have to keep them in repair except as to "fair wear and tear." The latter must be made good by the local education authority. The managers may use the school out of school hours, but must allow its use to the local education authority for educational purposes out of school hours three days a week if that body has no other suitable accommodation.

The teachers in such schools are appointed and dismissed by the managers, but the consent of the local education authority is necessary. Consent to an appointment can only be withheld on educational grounds, and consent to a dismissal is not required when that dismissal is made on religious grounds. The courts have declared that the teachers in these schools are the servants, not of the local education authority, but of the managers. The managers must dismiss a teacher if required to do so by the local education authority on educational grounds, and must obey its instructions with regard to the number and educational qualifications of the teachers employed.

The religious teaching given in a non-provided school must be in accordance with the provisions of the trust deed relating thereto, and must be conducted subject to the conscience clause previously mentioned.

The managers must "carry out any directions of the

local education authority as to the secular instruction to be given in the school." If the managers refuse to obey these directions, the local education authority can step in and carry them out. The local education authority must make bye-laws to enforce the attendance of children at school.

§ 185. **Education Finance.**—The money for the repair of non-provided schools must come either from endowments or private subscriptions. No rent is paid for them, although they are privately owned. Subject to this all public elementary schools, whether provided or non-provided, are now maintained out of the public money. The Act of 1918 abolished fees in public elementary schools. Part of the cost of elementary education is paid out of the Imperial Exchequer, and the rest is raised by the local education authorities. Prior to the Act of 1918 the County Council was required to raise within particular districts certain portions of the expenses of education; but now it is obliged to consult the council of the particular borough or urban district before doing so. The grants made by the central Exchequer were formerly of a very complicated nature, but now one consolidated grant (termed the Substantive Grant) is made. It consists of not less than half of the approved net expenditure, and is calculated on the basis of certain regulations laid down by the Board of Education. The grant varies with the poverty of the district, but the maximum grant is two-thirds of the net expenditure or the excess of the net expenditure over a shilling rate, whichever is the greater.

§ 186. **Higher Education to 1918.**—The State made grants yearly to certain universities and colleges of university rank, but these were not of large amount. Since 1889 the councils of counties, boroughs and urban districts have been able to spend money for technical education, a term which, although it has received a very wide

interpretation, does not include all "secondary" education. In 1890 such councils were aided in supplying this technical education by a subvention from the State which was paid out of the proceeds of certain duties on intoxicants. Wales was in a rather better position. The councils of its counties and county boroughs have, since 1889, been able to contribute to secondary education, whether "technical" or not. Since 1902, however, the councils of all counties and county boroughs have had power to supply or aid the supply of all education other than elementary.

Elementary teachers are trained in training colleges. These have in the past been founded by private persons or bodies, but since 1902 they may also be supplied by local authorities having power to spend money on education other than elementary. Financial assistance is given by the State by means of scholarships to the teachers being trained, but this is dependent on the maintenance of efficiency as shown by Government inspection and examination.

Education other than elementary also included, prior to 1918, certain teaching in evening continuation schools and to those above a given age. Before 1902 the provision made for this kind of instruction by local education authorities had been held to be illegal on the ground of being outside the scope of elementary education.

§ 187. **The Education Act of 1918.**—The aim of this far-reaching measure is "the progressive development and comprehensive organisation of education." It seeks to establish a system of national education which shall embrace all educational activities. Only the main provisions of this important Act can be summarised here:—

(1) Local education authorities are required to submit schemes to the Board of Education showing the mode in which their duties and powers under the Education Acts are to be performed and exercised.

(2) They must adapt the teaching in the higher classes of public elementary schools to the requirements of older children, and must provide practical instruction and courses of advanced instruction, and arrange for the transfer of children to higher schools when advisable.

(3) No exemptions from attendance at school can be granted to any child between the ages of five and fourteen. Powers are also given to the local education authorities to make bye-laws to extend the school age to fifteen years.

(4) Local education authorities must provide part-time continuation schools for young persons under the age of sixteen, and, after seven years from the appointed day, for those under eighteen years. The minimum number of hours of attendance at such schools each year is fixed, in the former case at 280, in the latter at 320. This provision is subject to certain exemptions, chiefly relating to those young persons who are being otherwise educated. This section is the most important in the Act. The continuation schools will provide courses of study and instruction and of physical training, without payment of fees.

(5) No child under twelve years of age is to be employed, and no child between twelve and fourteen shall be employed for more than two hours on any Sunday or on any school day before the close of school hours on that day, or on any day before 6 A.M. or after 8 P.M. Employment of children in factories, workshops, mines and quarries is prohibited.

(6) Special schools are to be established for physically defective and epileptic children.

(7) Local education authorities are empowered voluntarily to form Joint Committees or Federations for carrying out work of common interest.

(8) They may prohibit or modify the conditions of

employment of a child if those conditions are deemed prejudicial to health or physical development.

(9) They are empowered to establish holiday and school camps, centres and equipment for physical training, playing fields, school baths and swimming baths, and other facilities for social and physical instruction for children and young persons, and persons over the age of eighteen attending educational institutions.

(10) By an act of 1907 local educational authorities were obliged to make provision for the medical inspection of children in elementary schools. By the 1918 act they must now provide medical inspection and treatment in secondary and other educational institutions, continuation schools, and schools provided by them.

(11) The local authorities are empowered to provide or aid the supply of nursery schools for children between the ages of two and five.

(12) They may make arrangements, including provision of board and lodging, for children otherwise unable to receive the benefit of efficient elementary education.

(13) They may aid teachers and students to carry on an investigation for the advancement of learning or research.

(14) There are various financial clauses attached to the act. The former limit on the amount to be raised by a County Council out of rates for the purpose of education other than elementary is done away with, and the grant made to the local authorities out of the Exchequer is not to be less than one-half of the recognised net expenditure.

The depressed financial condition of the country since the war has for the moment suspended most of the plans for putting the Act into operation.

The various Education Acts were all consolidated by the Education Consolidation Act of 1921.

PART VI.

IMPERIAL RELATIONS.

CHAPTER XVIII.

THE DOMINIONS BEYOND THE SEAS.

§ 188. **The British Empire** of the present day includes territories in each of the five continents. Our present sovereign is King not only of Great Britain and Ireland, but also of the "British Dominions beyond the seas"; in addition he is "Emperor of India." An account of the Government of India is reserved for the following chapter.

The term "colony" is applied to any part of the King's dominions except Great Britain and Ireland, the adjacent islands, and the Indian Empire; but colonies having responsible government are now technically termed "Dominions." The overseas dominions vary very much in type, but may be roughly classified, according to the way in which they are governed, as follows:—

(1) Those of "Dominion Status," *i.e.* with representative and responsible governments. The Dominions are Canada, Newfoundland, Australia, New Zealand, and the Union of South Africa.

(2) Those with representative but not responsible governments, *i.e.* with a legislative assembly wholly or partly elected, and an executive council nominated by the Crown, *e.g.* the Bahamas, Barbados, Jamaica, Mauritius.

(3) Those governed by a Governor acting with an executive and a legislative council, both nominated, *e.g.* Ceylon, Fiji, Straits Settlements, Trinidad.

(4) Those wherein both legislative and executive powers are vested in the Governor alone, *e.g.* Gibraltar, Labuan.

(5) Protectorates, *e.g.* Kenya, Uganda, Nigeria.

(6) Spheres of influence, *e.g.* in the Persian Gulf.

(7) Mandatory spheres, *e.g.* Palestine, Mesopotamia.

Each of these dominions has had its own history, but all of them fall under one or other of the five following heads:—

(1) Those acquired by discovery and settlement.

(2) Those acquired by conquest.

(3) Those acquired by cession from the original inhabitants or possessors.

(4) Those acquired by annexation.

(5) Those acquired under a mandate from the League of Nations.

The bond which unites these heterogeneous units is allegiance to a common Sovereign. There are two other legal bonds, far less potent in their influence in regard to the self-governing Dominions; all the colonies are subject to the sovereignty of the British Parliament, and a right of appeal lies from colonial courts to the Judicial Committee of the Privy Council.

In the following paragraphs is given a description of the legal relations which still in form govern the relations between Great Britain and the colonies. It must, however, be understood that in the case of the self-governing Dominions the theory in many respects hardly represents the facts, that these Dominions are no longer regarded as colonial dependencies but as a group of allied states forming with Great Britain a Commonwealth of Nations.

§ 189. **The British Parliament** is the supreme legis-

lative authority of the Empire. But though all British dominions are subject (except as regards taxation) to the legislation of the British Parliament, no Act of that Parliament is taken to affect a dominion unless that dominion is expressly mentioned. As no Act of the British Parliament can fetter the discretion of its successors, Parliament can legally legislate for any colony on any subject in spite of previous legislation on the point, or of a previous delegation of authority to a local Parliament. Thus it has passed legislation which binds the colonies with regard to extradition, copyright and merchant shipping. Yet, considering the immensity of subjects involved in the government of a diversified empire, the British Parliament does very little in the way of direct legislation for the overseas dominions. One of the great principles of British imperial policy is to allow local self-government wherever this is feasible; where it is not legislative power is usually in the hands of local authorities representing the Crown, and in some cases power is also reserved to the Crown to legislate by Order in Council. Generally speaking the British Parliament only legislates directly for the colonies in special cases or where the matter in question concerns several colonies or the Empire as a whole and cannot well be dealt with by any local authority; even in these cases the power is very sparingly used, and generally after consultation with the colonies.

Over vast tracts of the Empire the British Parliament has delegated its legislative authority to local Parliaments constituted by itself, though it retains a general supervision of Imperial matters. These colonial Parliaments derive their being and their powers from an Act of the British Parliament, and, according to strict theory, could by the same authority be deprived of those powers. In actual fact such a contingency is inconceivable in the case

of the self-governing Dominions. The Imperial Parliament neither creates such Parliaments, nor alters their form, except at the request of the colonies concerned. To take a striking example, in 1900 Parliament passed an Act providing for the federation of the Australasian colonies in the Commonwealth of Australia and defining the Constitution of the latter. This Act took away certain powers which had been granted previously to the colonial legislatures, but only on the ground, recited in the Act, that these colonies had "agreed to unite in an indissoluble Federal Commonwealth." As a matter of fact the Constitution was drafted in Australia itself, and accepted by the various colonies; a delegation was sent to England to negotiate with the British Government and to see the draft bill through Parliament. The bill finally passed was substantially the Australian draft, with certain modifications agreed upon between the Government and the delegation.

§ 190. **Checks on Colonial Legislation.**—While, however, this supreme legislative power of Parliament is very rarely used, colonial legislation, even in the self-governing Dominions, is subject to various checks.

The Dominion legislatures possess exceedingly wide powers, indeed the only powers they do not possess are those which are incompatible with their position as non-sovereign bodies. Dominion laws are still confined in their application, unless otherwise provided by the Imperial Parliament, to the territorial limits of the Dominion. Moreover, no Dominion Parliament could pass legislation inconsistent with its status as part of the Empire, *e.g.* it could not legally enact a declaration of war or peace, or the secession of the Dominion from the Empire. Again, a colonial law must not be repugnant to an Act of the British Parliament which applies to the

colony in question; if it is so, to the extent to which it is repugnant, it is absolutely void. While any statute passed by the British Parliament affecting a colony over-rides any colonial law that may then be in existence. In such cases colonial courts would have to administer the Imperial law and disregard any colonial laws conflicting with it. It should be noted, however, that it is only the statute law of the British Parliament—or rather that part of it which expressly refers to the colonies—which binds a colony in this way. A colony is quite free to depart as widely as it likes from the common law of England.

The other check on the law-making capacity of colonial legislatures is the veto of the Crown. This veto is of a two-fold nature and is employed fairly frequently. In each colony there is a Governor appointed by and representing the Crown. If a bill passes the legislative bodies of the colony the Governor has the power either to give or to withhold his consent, or as a third alternative to reserve the bill for the consideration of the Crown. If he withholds his consent the bill is at an end. If, however, he reserves the bill for the consideration of the Crown, its fate will depend on whether the Crown assents or not. This practically means that the British Government, which advises the Crown, decides whether the bill is to become law or not. The Constitution of the Commonwealth of Australia lays down that such a bill will not become law unless the assent is given within one year. Some time limit is desirable in order to prevent the course of legislation from being prolonged indefinitely.

If, however, the Governor has assented to a bill it may still be set aside, as the Crown, acting on the advice of the home Government, has a further power of veto and can over-ride the decision of the Governor. The bill may or

may not have contained a clause suspending the operation of the statute until the signification of the royal assent. If it does not contain such a clause it comes into force directly the Governor's assent is given, but is subject to the risk of the veto of the Crown being subsequently exercised. If this happens it ceases to be law. If there is a clause suspending its operation until the royal assent is given it will never come into force unless that royal assent is given. As a general rule the disallowance of a bill to which the Governor's assent has been given must be made within two years; but in the Commonwealth of Australia, and in the Union of South Africa, the period within which such disallowance may take place is limited to only one year.

These Constitutions also confer a further power on the Governor. He may return a bill which has been presented to him for assent by the legislative bodies of the colony together with any amendments he may recommend. These amendments are then considered by the legislative chambers.

The methods in which the Crown, or its representative, the Governor, can exercise control over colonial legislation may therefore be summarised under the following four heads:—

(1) The Governor may remit the bill with amendments.

(2) The Governor may refuse assent to the bill. The refusal of assent outright is now practically obsolete.

(3) The Governor may reserve the bill for the consideration of the home authorities.

(4) The Crown may veto a bill which has received the Governor's sanction.

§ 191. **The British Control over Colonial Legislation.**—It might be thought from the preceding paragraph that a colonial Governor is entrusted with a somewhat arbitrary

power. He is, however, limited by express instructions laid down by the Colonial Office. At the present time the facilities of telegraphic communication enable him without delay to consult the home authorities on any point of difficulty and to receive their instructions at once.

As a general rule colonial legislation is interfered with as little as possible. The powers of the Crown are, however, used to prevent any conflict with the legislation of the British Parliament, and also to prevent any colony from adopting a policy which the home Government considers to be detrimental to imperial interests. Clause 64 of the South Africa Act 1909 reads as follows: "When a Bill is presented to the Governor-General for the King's Assent he shall declare according to his discretion, but subject to the provisions of this Act, and to such instructions as may from time to time be given in that behalf by the King, that he assents in the King's name, or that he withholds assent, or that he reserves the Bill for the signification of the King's pleasure. All Bills repealing or amending this section . . . and all Bills abolishing provincial councils or abridging the powers conferred on provincial councils under Section 85, otherwise than in accordance with the provisions of that section, shall be so reserved. The Governor-General may return to the House in which it originated any Bill so presented to him, and may transmit therewith any amendments which he may recommend." It will be seen therefore that in using his power of assent a Governor has only a limited discretion; he must always act in accordance with any orders he may have received from the home Government. As he is in close touch with the parliamentary leaders in the colony and can inform them of the probable action of the Crown with regard to any proposed legislation, he exerts a great deal of influence over them in preventing the introduc-

tion of measures which it would be necessary to disallow if passed.

§ 192. **The legislative power of the Crown in Council** is confined to colonies which do not possess a representative legislature. This power has always obtained with regard to colonies acquired by conquest or cession, but until 1887 there was considerable doubt as to the exact powers of the Crown in colonies which have been acquired by settlement. The British Settlements Act of that year, however, gave full power to the Crown in Council to establish such laws constitute such courts and make such regulations for the administration of justice as were necessary for peace, order, and good government in any British settlement. The latter term is defined as a British possession not acquired by conquest or cession. The Act further provides that these powers may be delegated to any three or more persons in the settlement itself. In such a case these persons will have a jurisdiction concurrent with that of the Crown in Council.

It has been decided that, once the Crown has granted to a colony the right to legislate for itself in a representative assembly, it loses its own power of legislation for ever.

§ 193. **Colonial Law Courts.**—These administer the laws of the colony and also, where they apply, the laws of the British Parliament. If it is suggested that any colonial law conflicts with an imperial statute it is the duty of the court to determine whether this is the case. In this respect colonial laws are different from those of the British Parliament, and the distinction is due to the subordinate character of a colonial legislature. Its statutes are valid only if they comply with certain rules. Whether they do or do not comply with those rules has to be decided by the courts. British statutes, on the other hand, are absolutely binding directly they are passed

The courts themselves are created either by the Crown in Council in accordance with the powers mentioned in the last paragraph, or, in cases where the colony has a legislature of its own, by such legislature.

There is a right of appeal from colonial courts to the Judicial Committee of the Privy Council. As a general rule this appeal is allowed only from the highest colonial court, so that a suitor must first carry his case through the various courts of his own colony and exhaust the possibilities of getting the decision reversed there before he brings it before the English tribunal. The history and functions of the Judicial Committee have been dealt with in the chapter relating to the History of the Judiciary.

Suitors from the highest court of the various colonies composing Canada and Australia have a choice of appeal. They may either appeal direct to the Judicial Committee of the Privy Council, or go to the Court of the Dominion or Commonwealth, as the case may be. If they go to the latter there is no further appeal, unless special leave is granted either by the Dominion or Commonwealth court or by the Judicial Committee itself. This will only be done where the case is of public importance or of a very substantial character. It may be added that in certain cases touching the constitution of the Commonwealth the right of the Judicial Committee to grant special leave to appeal has been waived. In the Union of South Africa there is no appeal to the Judicial Committee without its special leave.

§ 194. **Imperial Finance.**—A fundamental principle of British colonial policy is that each unit of the Empire should be, except in special circumstances, self-supporting. There are very few exceptions to this rule. The colonial authorities raise locally all the revenue required for local needs. Occasionally the British Parliament makes grants

to meet exceptional needs, or contributes to the cost of administering Crown Colonies and Protectorates in the early stages of development, or undertakes certain capital expenses, *e.g.* for railway development. Under no circumstances does it impose taxation on the subjects of a Dominion or colony, for these subjects are not represented in the British Parliament. It was over this question of "no taxation without representation" that the quarrel between the North American colonies and Great Britain came to a head in the later eighteenth century. The successful revolt of these colonies led to an abandonment, once and for all, of the claim to tax the overseas dominions.

There is thus no imperial revenue or debt. The Dominions raise their revenue as they please. So complete is their fiscal freedom that they can and do impose customs dues on British goods entering their territory, partly for the sake of revenue, partly to protect home industries; though in most cases they give preferential treatment to British over foreign goods.

§ 195. **Imperial Defence and Foreign Policy.**—In no departments of Imperial relationships have events moved more rapidly during the past two decades than in those of defence and foreign policy—two subjects intimately connected—though in both respects Great Britain still has a preponderating voice and shoulders most of the responsibility. In the earlier stages of self-government Great Britain provided for the internal and external defence of the Dominions, but in time it was realised that the corollary of self-government is self-support, and the Dominions took over the defence of their immediate areas. The British Government has, however, an undisputed right to station its troops at its own cost wherever it thinks necessary for purposes of Imperial defence.

The Dominions have established their own militia

systems for purposes of local defence, in some cases enforcing compulsory training. Colonial forces are entirely under the control of the Colonial Governments. The Dominions are under no obligation to supply contingents for service overseas, and the British Government is still responsible for the general strategical defence, military and naval, of the Empire. Nevertheless, though under no technical obligation, the Dominions have proved themselves more than willing to play their part in a struggle involving the fate of the whole Empire. During the War of 1914-18 all the Dominions provided armies or contingents, which fought in every area of conflict. While in the Dominions colonial troops are governed under local laws; when overseas the Imperial Army Act applies to them, except in so far as it is varied by local Acts, enacted under special authority for that purpose given by the Imperial Army Act. During the recent War, though the Dominion forces overseas were under the command of officers appointed by the Army Council, they remained distinctive units whose internal organisation was interfered with as little as possible. This co-operation was facilitated by the efforts made before the War to organise the various military forces of the Empire on a uniform basis, so that, if need arose, they could be combined into a homogeneous Imperial Army. This principle was agreed upon by the Imperial Defence Conference called in 1909, and the task of reorganising the colonial defence forces on common lines was carried out by the Imperial General Staff—which worked in co-operation with a number of independent but closely linked colonial General Staffs—and by the Committee of Imperial Defence.

The same principle of co-operation without centralised control has been applied in the case of naval defence. The first participation of the Dominions in Imperial defence

took the form of contributions to the cost of the British Navy; but as the Dominions became more conscious of their national status the demand grew up that they should maintain Dominion navies under their own control though so organised as to be able to co-operate readily with the British fleet. This principle was accepted by the Defence Conference of 1909, and in 1911 a comprehensive agreement was entered into in regard to the position of these Dominion navies, and the necessary legal authority for their maintenance was given by the Naval Discipline (Dominion Naval Forces) Act, 1911. When war broke out in 1914, however, only Australia had organised an effective navy. Further progress in the same direction is now being made, by co-operation between the British and Dominion Governments, and doubtless in time a comprehensive scheme will be evolved. The right and duty of the Imperial Government to provide for the naval defence of the whole Empire remain unimpaired by the existence of these Dominion fleets, and it is recognised that naval co-operation in war rests upon no legal obligation but upon the voluntary action of the Dominions.

Intimately connected with the question of Imperial defence is that of Imperial foreign policy. From the early days of Dominion self-government the British Government adopted the principle of consulting the Dominions on matters affecting them directly; but general questions of foreign policy remained the sole concern of the British Government, and all negotiations and arrangements with foreign states, even those in which the colonies were concerned, were made through the British Foreign Office. For the time being the colonies were well content to leave such matters to the British authorities. In time, however, the practice grew up of allowing the Dominions to negotiate, through the medium of the British authorities, special

commercial treaties with foreign states. In 1895 certain definite principles were laid down by the British Government, and accepted by the Dominions, in regard to the negotiation and ratification of special treaties for the colonies. These principles are still in force. Subsequently the freedom of the Dominions to accede or not as they please to commercial treaties negotiated by the British Government was gradually recognised. The present position of the Dominions in regard to commercial treaties is as follows. No Dominion is bound by any such treaty to which it has not assented, and in arranging general treaties the British Government consults the Dominions as to what concessions they wish it to secure for them. If a Dominion wishes to arrange special relations with any foreign state, the Imperial Government will appoint Dominion representatives to negotiate with that state and to sign, jointly with the British ambassador at the foreign court, any treaty arranged. The terms must not contain any concession by the foreign state calculated to injure the interests of any other part of the Empire, and the Dominion must accord to the rest of the Empire every concession it makes to the foreign state. The treaty must be ratified by the Crown on the advice of the British Government, which will only so advise if requested to do so by the Dominion.

In political, as distinct from commercial, matters, the British Government has long recognised that it should consult the Colonies on questions in which they were particularly interested; though on occasions it has been forced to disregard local claims in the interests of the Empire as a whole. During the past few years, however, a vitally important development has taken place. The increasing seriousness of the international situation led the Dominions to realise that the general policy of the Empire

very closely concerned themselves, and the feeling grew up that they had a right to be consulted on questions of general policy. This opinion was strongly represented at the Imperial Conference of 1911, and the British Government accepted the view that the Dominions should be consulted, and proceeded to lay before the Dominion representatives a confidential account of British foreign relations and to discuss with them the bearing of the international position upon the problems of Imperial defence.

The War led to a still more important step. Down to 1917 the conduct of foreign policy was left to the British Government; but in 1917 and 1918 the attendance of Dominion representatives at meetings of the Imperial War Cabinet (see below) ensured a measure of co-operation. In 1919 the British Empire was represented in the peace negotiations at Versailles not by representatives of the British Government alone, but by a British Empire Delegation; moreover in matters specially affecting their interests the Dominions of Canada, Australia, New Zealand, and South Africa were given the right of separate representation. Thus the Dominions secured a recognition of their position while at the same time the unity of the Empire was preserved. The treaty of peace with Germany was signed by representatives of Canada, Australia, New Zealand, South Africa, and India, as well as by those of Great Britain, and was moreover ratified by the Dominion Parliaments. The same compromise between Dominion nationalism and Imperial unity is established by the Covenant of the League of Nations. The four Dominions and India are separately represented in the Assembly of the League, while the British Empire has a member in the Council of the League.

This new international status of the Dominions raises, of course, many problems, and the situation is not yet

clearly defined; but the step certainly involves a much closer co-operation between the Imperial and Dominion Governments in future. The machinery for ensuring continuous consultation between Great Britain and the Dominions on matters of foreign policy has yet to be worked out.

§ 196. **The Status of the Dominions.**—Imperial unity is secured by the bond of the British Monarchy—how potent is that bond has been strikingly demonstrated by the recent colonial tours of the Prince of Wales—and by the legal supremacy of the British Parliament; at the same time the Dominions have secured a recognition of their national status, which though not legally complete is none the less real in fact. "They are in spirit what they are not in legal fact." We have seen that spirit at work in the development of local schemes of defence and of co-operation in foreign policy; it is at work equally in problems of constitutional relationship between Great Britain and the Dominions. Some of the Dominions already possess the power of altering their constitutions, though others do not. The Dominion Governments have put forward the claim that they are His Majesty's Advisers equally with the British Ministers and have an equal claim to advise the Crown directly. It has been suggested that they should nominate colonial Governors. The present position of the Judicial Committee of the Privy Council is open to considerable objection. The Dominions dislike the system of appeal, as being expensive, and derogatory to their independence and to the capacity and dignity of their own Supreme Courts. They are inclined to object to the supreme power of the British Parliament, even though that power is very rarely used. They have emphatically rejected the idea of Imperial Federation which has found many advocates in Great Britain. The whole conception

of the Empire has, indeed, changed radically; it is now regarded as a Commonwealth or League of Nations co-operating with a view to the realisation of common interests and common ideals. The machinery for continuous and effective co-operation is being slowly evolved. That evolution has not yet proceeded very far but it has already produced remarkable results.

§ 197. **Imperial Co-operation.**—As the self-governing colonies developed, some recognised method of consultation between the British and Dominion Governments became necessary. One method was for the colonies to appoint agents to look after their interests in Great Britain and to conduct negotiations and exchange views with the British Government. This method has been practised for many years. All the Dominions maintain Agents-General, as they are termed, in London; while the separate Australian states and some of the Canadian provinces have Agents-General as well. The style of High Commissioner is given to the representatives of Canada, New Zealand, Australia and South Africa. The duties of the Agents-General are, however, mainly commercial, and the Dominion Governments have shown a reluctance to entrust important political duties to them. They press the claims of colonial produce on British consumers, circulate information as to emigration, and generally look after the interests of the colony they represent in such matters as rates of freight and cabling and shipping arrangements. They are paid by the Dominions and not by the British Government. Some of the Dominions also maintain commercial agents in certain large towns, British, colonial, and foreign.

For colonies of other types similar duties are performed by the Crown Agents for the Colonies. There are three in number, appointed by the Colonial Secretary, and subject to his supervision. They act as business and financial

agents in Great Britain for the Governments of the Crown Colonies and Protectorates. They are paid out of a fund contributed to by the various colonial administrations which they represent.

Far more important is the development of a system of periodical consultation between the heads of the British and Dominion Governments by means of the Imperial Conference. The first "Colonial Conference," as it was originally called, met in 1887, when advantage was taken of the presence in London of representatives of the Dominions at the celebration of the Jubilee of Queen Victoria to hold conferences between these representatives and the home Government on colonial matters. In 1897, on the occasion of the celebration of the second Jubilee, and in 1902, on the occasion of the coronation of Edward VII., further conferences were held. The latter conference decided that it was desirable to hold similar meetings at intervals of four years. At the Conference of 1907 the title was changed to that of Imperial Conference, and its constitution was defined. At the earlier meetings the Colonial Secretary presided, but with the change of title the Presidency was assumed by the Premier of Great Britain. As constituted at present the Conference includes the British Prime Minister, the Colonial Secretary (who acts as chairman in the absence of the President), the Prime Ministers and other Ministers of the five Dominions, the Secretary of State for India and other representatives of India. The constitution of 1907 established a permanent Secretariat to deal with Conference matters, and to keep the Dominions informed thereon, and also provided for subsidiary conferences on topics of particular importance arising between the full meetings.

The importance of these Conferences has grown steadily ever since their inception; they now form an integral

part of Imperial administration and a stepping-stone to greater co-operation and organisation in the future. The movement received a great impetus during the recent War. In 1917 the Prime Ministers of the Dominions were invited to attend a series of special meetings of the "War Cabinet" (§ 78) in order to discuss the conduct of the War and the terms of peace; India was also asked to send representatives. The sessions of the Cabinet thus enlarged were known as the "Imperial War Cabinet." A division of labour was made. The more important and urgent questions of war and peace were dealt with in the War Cabinet, presided over by the British Premier; while less important war problems and other topics not directly concerned with the War were dealt with in meetings of the Imperial War Conference, at which the Colonial Secretary presided. Early in 1919 the War Cabinet transferred its meetings to Paris, where its members served on the British Empire Delegation and the Dominion Delegations.

The Imperial War Cabinet ceased to meet after the conclusion of peace with Germany, but its significance was very great. As in the case of all the Imperial Conferences, it was a consultative and deliberative body, with no power to bind the units it represented; the Dominion Ministers assented to its proposals only on the condition that they could obtain the concurrence of their colleagues and Parliaments, though as a matter of fact that concurrence was almost a foregone conclusion. The work of the Imperial War Cabinet is continued in time of peace by the Imperial Defence Committee, to which representatives of the Dominions are summoned when matters concerning the Dominions are under discussion, and by the Imperial Conference, which still continues, and is likely for some time to continue, the main organ for ensuring Imperial co-operation. It adequately represents

the real conditions governing Imperial relationships. Its resolutions are not binding on any unit represented in it, they are simply recommended to that unit for adoption if it sees fit. Already the Conferences have done much useful work, in simplifying and harmonising legislation and regulations throughout the Empire on such matters as shipping, copyright, patents, company law, naturalisation, and so forth, and in improving Imperial communications and economic co-operation, and in promoting emigration within the Empire; moreover they facilitate a frank interchange of views on general questions and an effective settlement of possible causes of dispute between various sections of the Empire.

§ 198. **The Secretary of State for the Colonies** is still the official channel of communication between the British Government and the various colonial administrations, though the increasingly close and direct relationships between the Dominion and British Governments render his office less important in this respect than hitherto. Indeed the Dominion statesmen have questioned the usefulness of the office; but, whatever its value in relation to the Dominions, it performs very necessary functions in regard to other colonies. Even as regards the Dominions it does very useful work as a co-ordinating body, acting as the agent between the Dominion authorities and the various British Departments of State—the Admiralty, Foreign Office, Board of Trade, etc.—with which they have dealings, and also between one part of the Empire and another. These functions may in time be transferred to another Minister; but the Colonial Secretary has in any case another great sphere of work, the administration of the Crown Colonies.

The Privy Council, the Board of Trade and Plantations, and the Home Secretary have all at various times been

concerned with the administration of the colonies. In 1801 the third Secretary of State, who had been created in 1794, was appointed Secretary for War and the Colonies. In 1854 the outbreak of the Crimean War led to the appointment of a Secretary of State for the Colonies, in order to lessen the work of the Secretary for War. The Colonial Secretary is assisted by one Parliamentary Under-Secretary, one Permanent and four Assistant Under-Secretaries, and a large staff.

Formerly the work of the Colonial Office was arranged on geographical lines, but in 1907 it was entirely re-organised. There are now four main branches. The Dominions Department deals with all business relating to the Dominions, and has attached to it the secretariat of the Imperial Conference. The Crown Colonies Department deals with the administrative and political work of the Crown Colonies and Protectorates. The General Department deals with legal business and general routine and various matters common to all Crown Colonies, *e.g.* currency, posts, education; and connected with it are four standing committees for Patronage, Railways and Finance, Concessions, and Pensions respectively. A "Middle East" Department was appointed in 1921 to deal with Palestine and Mesopotamia, and also with questions of policy in regard to other Arab areas within the British sphere of influence.

Colonial Governors are appointed on the recommendation of the Colonial Secretary, and receive their instructions from him. All laws passed by colonial legislatures come before him, and it is his duty to advise the Crown to disallow them or not. He has also considerable executive power over Crown Colonies, though this varies in proportion to the degree of self-government granted to them. This will be considered in a later paragraph.

The Colonial Secretary determines the policy of the home Government with regard to the colonies, and the matters which arise in colonial administration, though this statement is subject to the qualification mentioned above, that the Dominions are tending more and more to deal directly and as equals with the British Government. The visit of Mr. Joseph Chamberlain to South Africa, and those of Mr. Winston Churchill to East Africa, Uganda, and elsewhere are examples of the modern desire to obtain first-hand knowledge of colonial problems.

The Colonial Office includes an Audit Department, which audits the accounts of various Colonies and Protectorates. The cost of this audit is borne by the administrations concerned. Another branch of Colonial Office activity is the Oversea Settlement Committee (formerly the Emigrants' Information Office). The British Government has found it desirable to undertake more responsibility in regard to British emigrants than in the past; and the Oversea Settlement Committee was formed for the purpose of advising the Government as to emigration policy. This Department also collects and distributes information on the prospects of emigration in the colonies. In 1916 the Imperial Institute was placed under the control of the Colonial Secretary, who is assisted in the work of management by an executive council. The Institute encourages trade between various parts of the Empire, by investigations, by supplying information, and by organising exhibitions.

§ 199. **The Self-governing Dominions** comprise the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, Newfoundland, and the Union of South Africa. The first two of these are federations of individual colonies which are themselves self-governing but subordinate. The other three possess

unitary Constitutions, though in the Union of South Africa the provinces have legislatures with much wider powers than are usually given to local authorities.

The legislature of a self-governing colony consists usually of a Senate and a House of Representatives, corresponding roughly to our Lords and Commons. Methods of selecting members for the Senate vary appreciably. Thus in the Union of South Africa the Senate is composed of eight members elected by the legislatures of each province, and of eight members nominated for ten years by the Governor-General. The Senate of the Federal Parliament of the Dominion of Canada consists of members nominated for life. In the Commonwealth of Australia the Senate consists of six representatives from each of the States composing the Commonwealth, who are directly elected for a term of six years. The House of Representatives in each colony is an elected house, though the franchise qualifications and the duration of Parliament vary with the different colonies.

The executive authority in all colonies, as in Great Britain, is vested in the Crown. It is exercised by the Governor on the advice of an executive council composed of the colonial Ministers of State. These are in a similar constitutional position to Ministers in Great Britain and are the leaders of the party in power in the legislative assembly. The Governor must act on their advice in the same way that the Crown acts on the advice of its Ministers at home, except where Imperial interests are involved. The position of the Governor is similar to but not identical with that of the Crown in Great Britain. The Governor, who holds office only for a few years, lacks the experience and prestige of the Sovereign, and his opinions carry less weight with his admirers; he has less influence but more power than the King. He can still decline to accept the

advice of his ministers if he feels that he can find others to take their place; and he can refuse the request of a cabinet to dissolve the legislature on an adverse vote if he considers that another ministry can be formed. But even the limited degree of independence accorded to a Governor is exercised more and more rarely, and colonial Governors tend to accept the advice of their ministers when formerly they would have used their own discretion.

The Act of Parliament creating the Dominion of Canada lays down that its government is to be "similar in principle to that of the United Kingdom." This short phrase admirably summarises the constitutional position of the self-governing Dominions.

§ 200. **Federated Dominions.**—These are Canada and Australia. The Dominion of Canada was proclaimed in 1867, and the Commonwealth of Australia in 1900.

In these federations the constituent colonies retain to a large extent the constitutional position and powers they possessed before federation, but are subordinate to the federation in matters relating to the colonies as a whole. In Canada certain matters are assigned exclusively to the provincial legislatures, while all other matters may be dealt with by the Dominion legislature. In Australia, on the other hand, the position is reversed, and it is the province of the Commonwealth Parliament that is defined. The Commonwealth courts have to determine all constitutional questions and conflicts between the laws of the various states and those of the Commonwealth itself. The Commonwealth may not prefer one state to another in any way, and an Inter-State Commission has been set up to execute and maintain the provisions of the constitution as to trade and commerce. This acts as a judicial body to which disputes between the various States and the Commonwealth on these points may be referred.

There are no provisions in the British North America Act enabling the Federal Parliament to alter the constitution. Consequently this can be effected, if the need arises, only by Imperial statute. In the Commonwealth of Australia Act, 1900, it is enacted that to amend the constitution a bill with this object in view must pass both Houses of Parliament by an absolute majority. It must further be submitted to a referendum and secure a majority of all the electors of the Commonwealth and a majority of electors in a majority of States. The constitution of the Commonwealth of Australia is thus an excellent instance of a rigid constitution.

§ 201. **Crown Colonies** may be divided into those which have representative government and those which have not. The latter class may again be divided according to whether the executive and legislative functions are vested in the Governor alone or in nominated bodies.

In colonies with representative government the upper house (if any) of the legislature is usually nominated, while the lower is wholly or in part elected by the inhabitants of the colony themselves. If there is only one house it always contains some nominated members. The executive is in the hands of the Governor assisted by a nominated executive council. The Bahamas, Barbados, and Mauritius are types of this kind of colony. Southern Rhodesia, which forms part of the territory controlled by the British South Africa Company, also possesses representative institutions.

The constitutions of colonies which have nominated executive and legislative councils are created by letters patent. The details of a constitution are given in the "Instructions," which are issued to the Governor, and while these are in force they form part of the rules governing the constitution of the colony. The Instructions

usually provide for the composition and working of the two councils and the general details of the government of the colony. They also enumerate the classes of bills which the Governor must reserve for the royal pleasure. Among colonies of this class may be mentioned the Straits Settlements, Trinidad, Hong-Kong, and the various West African colonies.

Gibraltar, Labuan, and St. Helena are examples of colonies which have neither legislative nor executive councils, but are governed by a Governor alone. The reason for this form of government is usually either military necessity, as in Gibraltar, or else the wild and uncivilised character of the country. Thus Swaziland is controlled by the High Commissioner for South Africa, while the Cook's Islands in the Pacific are governed by a Resident appointed by New Zealand.

In all these Crown colonies there is far more interference by the home Government than is the case in the self-governing Dominions. The "Instructions" to the Governor are of a fuller nature, and he constantly receives directions from home as to his actions. The chief executive matters thus dealt with are questions as to currency, banking, posts and telegraphs, education, medical and sanitary requirements, pensions and patronage.

§ 202. **Protectorates.**—It is difficult to define exactly what a protectorate is. The term is used to cover a class of relations between civilised and uncivilised countries in which the protecting state has not assumed full sovereignty over the territory protected, but at the same time claims an exclusive right of jurisdiction over it as against other nations. It is, however, only a transitional relationship, and it almost invariably tends to ripen into effective sovereignty by means of annexation.

The reasons which induce the assumption of protectorates

may be roughly classed under two great heads—political and humanitarian. A state may be forced to act by the knowledge that if it does not do so some other state will step in and annex the territory or proclaim a protectorate over it. It was this rivalry which caused what is known as the scramble for Africa in the eighties of the last century. Again, outside its own territory a state has no jurisdiction over persons other than its own subjects, and its efforts in ameliorating native conditions may be frustrated by acts which it is powerless to prevent unless it proclaims a protectorate, and so acquires the power to deal with all persons within the protected zone. Many of the protectorates in the Pacific were thus forced upon Great Britain in order, as it was said, to protect the blacks from the whites, and the whites from the blacks.

The degree of control exercised in protectorates varies greatly. In some it is merely nominal, in others it has practically the same effect as annexation. The control is usually entrusted to a Resident or Commissioner responsible to and under the orders of the Colonial Secretary, but in some cases this officer is appointed by one of the self-governing Dominions, and the territory protected forms part of its dominions.

Examples of protectorates at the present time are the Kenya, Nyasaland (formerly British Central Africa), Northern and Southern Nigeria, Uganda, and Somaliland protectorates and those depending on Sierra Leone and Gambia in Africa; and the Brunei, Sarawak and Tonga protectorates in Australasia. The territory of Papua in New Guinea is a protectorate administered by the Commonwealth of Australia.

§ 203. **Chartered Companies.**—The last quarter of the nineteenth century saw the rise of the modern chartered companies. These bear some analogy to the old trading

companies of Elizabeth's time, but also show marked differences in that they have no monopoly of trade, and their work is to a large extent political. The principal companies founded were the British South Africa Company, the Royal Niger Company, the Imperial British East Africa Company, and the British North Borneo Company.

The procedure is as follows. The Crown grants a charter to the company authorising it to develop certain defined districts, and delegating to it certain governmental powers. With regard to these latter powers the company is absolutely under the control of its home government. The British South Africa Company, for example, has power to make ordinances, but these must be approved by the Colonial Secretary. It may also establish and maintain a force of police, but all relations between the company and the natives are subject to the supervision of the Secretary of State. The power of revoking the charter at any time, if the company does not fulfil its obligations, is also reserved to the British Government. In the case of the Imperial British East Africa Company, and also in that of the Royal Niger Company, this power has been acted upon, but the latter company continues as a trading concern.

These companies do the pioneer work of colonisation. They are able to secure territory for the British Empire when political exigencies prevent the Government itself from acting; in this way private enterprise is enlisted in the development of uncivilised countries. The territory under their sway is very much in the same position as a declared protectorate, and always tends to become so by direct Government intervention. It is so far regarded as British that no interference by a foreign state is allowed.

As a general rule the working of such companies has not been a financial success, but it has had a civilising in-

fluence, and has usually benefited both the mother country and the territory administered.

§ 204. **Spheres of Influence.**—When one state has agreed with another that the latter shall have the exclusive or prior right of developing and exploiting a certain area, the territory within that area is frequently called a sphere of influence of the latter power. Such an agreement gives no rights of sovereignty and imposes no very definite duties, but in general the state interested acts as a restraining and directing force on the governing authority, if any, of the territory in question. Powers which are not parties would not be bound by agreements of this sort, but any interference by a state within the sphere of influence of another would be regarded as an unfriendly act. The creation of a sphere of influence is in some cases the first step to the establishment of a protectorate, but its main object under the present conditions of world-wide trade competition is to assure an open or exclusive market for the state which creates the sphere.

British spheres of influence exist in the Persian Gulf and in Arabia.

§ 205. **Sub-Colonies.**—Some colonies are not administered directly from Great Britain, but are placed under the control of a neighbouring colonial government. The latter government is responsible to the British Government for its administration of the former, but the principles of administration undergo no change. Thus New Zealand administers Samoa and the Cook, Auckland and Chatham Islands, while Australia is responsible for the government of Papua (British New Guinea), Norfolk Island and the Pacific territory ceded by Germany (see next paragraph). The Union of South Africa governs the territory in South-West Africa, formerly in German hands. The Straits Settlements control Labuan, while the Cocos Islands and

Christmas Island now form part of Singapore, and Tobago part of Trinidad. Mauritius, the Seychelles and Jamaica have all got various small dependencies.

§ 206. **Mandatory Spheres.**—Under the recent Peace Treaties certain ex-German and ex-Turkish territories were handed over to the British Empire, to be administered under mandates approved by the League of Nations. The Powers to whom mandates are entrusted are responsible for the good government and for the proper development of natural resources of the territory concerned. They may apply their own laws, subject to necessary local modifications, to the territory, and establish the form of administration they consider best fitted to local needs; but they are expressly forbidden to establish any naval or military base or fortification within the territory, or to subject the natives to military training, except for purposes of local police or defence. Examples of British mandatory territories are Palestine, Mesopotamia and Tanganyika (part of late German East Africa). The new status of the Dominions received a further recognition by the grant to them by the League of Nations of mandates for various former German colonies. Thus Australia has a mandate for New Guinea (late German New Guinea) and various Pacific islands, New Zealand for Western Samoa, and South Africa for South-West Africa. All these Governments are subject in the execution of the mandates to supervision by the League of Nations, and must present annual reports to that body The control of these mandated territories raises rather difficult questions of Imperial relationships. New Zealand procured formal authorisation of her administration of Samoa by an Order in Council of 1920, on the ground that Dominion law is limited to the territory of the Dominion. South Africa has simply asserted that it is necessary for the peace, order, and good

government of the Union that it should legislate for South-West Africa, while the Commonwealth of Australia has made use of the exceptional power granted by its constitution to legislate for any territorial acquisition and for its relations with the Pacific islands.

CHAPTER XIX.

INDIA.

§ 207. **Historical.**—On the last day of the year 1600 Queen Elizabeth granted a charter to the East India Company giving it the exclusive right of trading in all parts "of Asia and Africa, and America, or any of them, beyond the Cape of Bona Esperanza [Good Hope] to the Streights of Magellan." It is to the exertions of this company and the territorial rights which it acquired from the Great Mogul and other native Indian sovereigns that we owe the existence of the present Empire of India.

The company was an association of traders formed to compete with the Dutch and Portuguese in the trade to India. It had power to make regulations for the government of itself and its agents; and as its scope increased further powers of jurisdiction were given to it which formed the origin of the British administration of justice. Although its charter was renewed at various times it was not without rivals, and while its powers increased its subjection to the Crown became more complete. In 1709 after about twenty years of competition it was united with a new company which had sprung up.

Although it was founded for trading purposes it soon acquired certain posts on or near the coast of India. Bombay was handed over to it by Charles II. in 1669, and in 1683 it was given full powers of making war and raising military forces, but subject to the interposition of the royal authority. In the years preceding and following the middle

of the eighteenth century constant wars were engaged in. The victories of Plassey (1757) and Baxar (1764) made the company the masters of a large tract of Indian territory and by 1765 it may be said that it had grown into a territorial sovereign. In the last-named year a grant was obtained from the Mogul Emperor of the financial and military administration of Bengal, Behar and Orissa.

From this time forward the company gradually lost its trading rights and duties and became more and more subject to the interference of the Crown. It soon got into financial difficulties and had to invoke Government assistance. In 1773 the administration of its Indian possessions was placed under the control of a Governor-General nominated by the Crown. The government of Bengal was also organised and a supreme Court of Justice was established at Calcutta. Warren Hastings was the first Governor-General. Various parliamentary enquiries into Indian administration were held and Fox's famous East India Bill was the result. This was defeated in the House of Lords and after a dissolution Pitt with a parliamentary majority at his back passed the Act of 1784. This created the Board of Control, which consisted of the Chancellor of the Exchequer, a Secretary of State, and four other Privy Councillors. The Board had full powers of superintendence, direction and control over the affairs of the company. The latter had previously been administered by a Court of Directors, but now this Court became subject in all respects to the newly created Board although the former appointed the Governor-General and other officials. This system remained in force with some modifications until 1858.

A large amount of further territory was annexed by Lord Wellesley when Governor-General from 1798 to 1805. A searching parliamentary enquiry was again held as to

the Indian administration of the company, and in 1813 an Act was passed which reserved to the company the monopoly of the China trade and the tea trade, but threw open the rest of the export and import trade of India to British subjects. The monopoly reserved in 1813 was taken away in 1833 when the company was finally deprived of its commercial functions. Its administrative and political powers remained, but it was declared that the territorial possessions of the company were held "in trust for His Majesty, his heirs and successors, for the service of the Government of India." In India the inclusion of Lord Macaulay in the Governor-General's council induced a large amount of legislative activity. In 1853 the right of patronage was taken away from the Court of Directors and the Indian civil service was thrown open to general competition.

In 1858, as a result of the Mutiny of the previous year, the work and property of the company was transferred to the Crown. A fifth Secretary of State was appointed to attend specially to Indian affairs; he was to be aided by a council and responsible to the Crown and to Parliament.

Since 1858 the Sovereign has become Emperor, large accessions of territory in Burmah and on the North-Western frontier have been made, while the Straits Settlements have been separated from India and formed into a separate colony. The company was not formally dissolved until 1874.

§ 208. **The Government of India from 1858 to 1919.**—In November 1858, after the transference of the government from the Company to the Crown, Queen Victoria addressed a Proclamation to the Princes and peoples of India—the Magna Carta of India, as it has been called. This memorable document was "a pledge of good government," and set forth the principles on which the govern-

ment of India would be conducted. India would be administered for the benefit of the Indian people. All existing treaties and engagements with Indian princes would be faithfully kept, and their rights and privileges would be respected. Toleration of all forms of religion and equality before the law would be strictly maintained. "Due regard" would be paid "to the ancient rights, usages and customs of India," and "so far as may be, our subjects, of whatever race or creed," would be "freely and impartially admitted to offices in our service."

The transference of control meant at first little, if any, change in the system of government in India itself. The Governor-General in Council remained, and the Governor-General continued to be responsible to Parliament through the medium of the Secretary of State for India. Yet the change was in spirit, if not in form, very great. It did away with the awkward system of double control, openly established India as a part of the Empire, and brought the Indian rulers and peoples into direct relations with the Crown. In the words of King Edward's Proclamation of 1908, "it sealed the unity of Indian government and opened a new era."

From 1858 to the outbreak of the War in 1914 the fabric of Indian administration underwent much development and many changes. These changes resulted from the rapid increase in the business and duties of administration, the need for decentralisation, and the policy of giving native subjects a greater share in the work of government. The Governor-General's Council increased in size and organised its work on the departmental system, each member being made responsible for a separate department of state, and only the more important questions coming before the Council as a whole. Thus the Council became a kind of Cabinet for the discussion of general

policy, composed of the heads of the various departments of government, after the British model.

More important, however, was the establishment of the Legislative Council of the Governor-General, to which was delegated by the British Parliament the power of making laws for India subject to the approval of the Crown. This body began in a small way in 1861, and gradually expanded into a large and active assembly, including members representing certain classes or interests. Moreover it acquired powers other than those merely of legislation. It came to discuss and pass resolutions upon the annual budget, to put questions to the ministers, to debate and vote upon resolutions concerning public affairs and policy. It thus assumed a share in the work of administration, though that share was limited to criticism; it was in no sense a Parliament. Its powers were strictly limited and defined; it had no real control over the personnel or policy of the executive, and no power to enforce its resolutions. Yet it acquired a great influence, for it gave expression to public opinion and acted as an effective though not a legal check upon the administration; moreover it shaped Indian legislation and helped to stimulate interest in public affairs. Thus it prepared the way for the introduction of a more real measure of self-government.

At the same time the administration was being largely decentralised. The "Government of India," *i.e.* the Governor-General in Council, still retained supreme authority, but it came to exercise that control in two ways. It kept the direct administration of certain departments of state in its own hands, including the army and defence systems, relations with outside powers, finance, currency, railways, the postal and telegraph systems. On the other hand it delegated part of its authority, comprising most branches of internal administration, to local

governments over which it retained a general supervision and control. The number of provincial administrations with delegated powers increased steadily. Madras and Bombay, which had originally formed under the Company's rule separate presidencies, had rather wider powers than were given to other districts, and their Governors were assisted by executive councils. In 1912 Bengal became a presidency. In these three provinces and in four others there were established legislative councils, similar to the central legislative council, and consisting in the main of members representing constituencies or classes. Like the central assembly, they formed a medium for public opinion, they discussed local finances and administration, and within well-defined limits they legislated for their districts. Throughout the latter part of this period there was a steady tendency towards enlarging the powers of these local governments. Thus in still another direction the way was prepared for the recent changes in Indian government.

As yet, however, real control over Indian affairs remained with the Governor-General in Council and the Secretary of State, who was responsible to Parliament for the good government of India. The powers of the Secretary were very great, though they were—and are—limited by the necessity of acting with his Council. Both Parliament and the Secretary of State in Council kept a close control over Indian affairs, more especially over finance, military and defence matters, and relations with outside powers. The spread of Europeanised education, however, introduced a considerable section of Indians to European ideas and institutions. Moreover the creation of a large number of municipal and district boards and corporations, with extensive local powers and largely composed of native members, enabled many Indians to play an active and

influential part in public affairs; while though the government, central and local, was thoroughly "bureaucratic," *i.e.* controlled by officials, the great majority of those officials were Indians. In consequence of the increasing contact with Europe, the introduction of much of what we term "western civilisation," the various economic changes, and the very policy of the Government in associating natives more and more in the work of administration, there developed an extensive agitation among many of the more educated Indians for some degree at least of genuine self-government. Public opinion in England was becoming increasingly favourable to the more moderate Indian demands, and the example of the Dominions pointed in the same direction. This movement was accelerated by the War, and by a series of constitutional changes, effected by the memorable Government of India Acts of 1915, 1916, and especially of 1919, India was fairly started, so it was hoped, on the path towards self-government.

§ 209. **The Government of India Act, 1919.**—This epoch-making measure is based largely on the Montagu-Chelmsford report of 1918. The purpose of the Act is expressly stated to be "the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India as an integral part of the British Empire."

The Act is avowedly experimental. While basing the administration upon the system already in existence it aims at putting into practice the following principles:—(1) as far as possible to establish complete popular control in local bodies; (2) to give the provinces the largest measure of independence of the Government of India compatible with the discharge by the latter of its own responsibilities; (3) to maintain the authority of the

Government of India as indisputable in essential matters, pending experience of the effect of the changes; (4) to relax considerably the control of Parliament and of the Secretary of State. Thus these proposals aim at affording the peoples of India a real share in central government, while providing in the provinces the means for their attaining responsible government. A considerable degree of freedom in applying the provisions of the Act to local conditions is secured by the Act itself.

In the following paragraphs an account is given of the main outlines of the new system, which is now getting into working order. Any detailed description of the very complicated administration of India and the political and social problems involved therein is not possible within so brief a space. A distinction must be drawn between British India and the Native States. The former is British territory, the latter technically is not. The forms of government in the two are essentially different, and the administrative system outlined below does not apply to the Native States.

§ 210. **The Secretary of State for India** is still the official means of communication between the Governments of India and of Great Britain, and he is responsible to Parliament for all matters connected with India. His position is somewhat different from that of the other Secretaries of State in that he is required to act with the Council of India in the exercise of his powers. He presents annual accounts of revenue and expenditure to Parliament together with a statement of the conditions in British India. He makes appointments and promotions. He is assisted by a Permanent and a Parliamentary Under-Secretary and a large staff. To mark the new position of the Secretary under the 1919 Act, his salary and the expenses of his Department are now placed on the Home

Estimates, instead of being paid as formerly out of the revenue of India.

§ 211. **The Council of India** is appointed by the Secretary of State. It consists of not less than eight and not more than twelve members, appointed for five years. At least half of the members must have served or resided in British India for at least ten years and not have left India more than five years before appointment. A member cannot sit or vote in Parliament, but he may resign his position at any time. The Secretary is empowered to provide for a quorum, acts as President, and regulates the transaction of business. The Council must meet at least once a month, and may be convened oftener if the Secretary of State so directs. For the more convenient discharge of business it is divided into a number of committees, *e.g.* Finance, Political, Military, Revenue and Statistics.

§ 212. **Powers of the Secretary and Council of India.**— The Council has no initiative authority. Its duty is to conduct the business transacted in Great Britain in regard to the government of India. The expenditure of the revenue of India is subject to the control of the Secretary of State in Council. For certain matters a majority of votes of the Council is necessary, *e.g.* for the granting or appropriation of Indian revenues or property, the exercise of borrowing powers, the making of regulations for Indian appointments. All other matters which come before the Council of India may be determined by the Secretary of State, but if he acts against the votes of the majority he must record his reasons. Any member may require his opinion, and the reasons for it, to be recorded.

In practically every matter of importance the Secretary of State must act in Council. In particular, all orders and despatches sent to India, and all orders made in Great Britain as to the government of India must be signed by

the Secretary of State and submitted to the Council. These provisions do not apply to urgent or secret orders. The latter are such as relate to the making of war or peace, the conduct of negotiations or the policy to be pursued with regard to a prince or state. An order to commence hostilities in India must be communicated to Parliament.

Formerly the control of the Secretary of State and his Council over the Government of India was very considerable. The Government of India Act of 1919, however, provided for a relaxation of that control. The Secretary was empowered to regulate and restrict the exercise of the powers of superintendence, direction and control vested in the Secretary and the Secretary in Council, in such manner as might be necessary to give effect to the purpose of the Act, subject to the approval of Parliament. The establishment of a Legislative Assembly in India with a large majority of elected members has made it desirable that the Secretary of State should intervene as little as possible in matters of internal concern, where the Government and Legislature of India are in agreement. Moreover a portion of the functions of the Secretary in Council has been entrusted to a separate official, the High Commissioner.

§ 213. **The High Commissioner for India.**—By the Government of India Act, 1919, the King was empowered to appoint a High Commissioner for India in the United Kingdom, and to delegate to him any of the powers previously exercised by the Secretary or the Secretary in Council in regard to the making of contracts, etc., and to prescribe the conditions under which he should act on behalf of the Governor-General or of any Local Government. Such an officer was appointed in 1920. He is subject to the direction and control of the Governor-General in Council and acts as Agent in the United

Kingdom on behalf of Local Governments in India for such persons as the Governor-General in Council shall prescribe. He also conducts a certain amount of business relating to the Government of India, formerly conducted by the India Office, but now assigned to him by the Secretary of State. The office will doubtless develop considerably as the new system gets well established.

§ 214. **The Government of India** consists of the Governor-General in Council. The Governor-General, or Viceroy, as he is popularly called, is appointed by the Crown for a period of five years. He acts with a council for both executive and legislative purposes, but is subject to the control of the Secretary of State. That control is now much less exercised than it was before the recent changes, as has already been remarked. It is as true to-day as before the War to say that "the superintendence, direction and control of the civil and military government of British India is vested in the Governor-General of India in Council," but the changes in the character and working of the Council have greatly altered the position.

The Executive Council until recently consisted of six members, but the Act of 1919 abolished the old statutory maximum. In 1920 there were eight members. One must be a barrister or pleader of not less than ten years' standing. The commander-in-chief is appointed as an extraordinary member of the Council. Members now sit for ten years. The Governor-General must sign all orders of the Council: he has a casting vote, but is bound by the majority of votes unless he is of opinion that the safety, tranquility, or interests of any part of British India are essentially affected by the proposed measure.

The administrative work is done by the various Departments of State, which are presided over by the members of the Council. The Foreign and Political Department

is under the direct superintendence of the Governor-General. By the terms of the 1919 Act the Viceroy can appoint from among the members of the Legislature a number of secretaries to assist members of the Executive Council, *i.e.* to hold positions analogous to our parliamentary under-secretaries.

§ 215. **The Indian Legislature.**—Ever since 1861 the size and functions of the legislative council have been gradually expanding. The Indian Councils Act of 1909 established the system in vogue till the 1919 Act. By the Act of 1909 the Legislature developed into a Council of 68 members, of whom 36 were official and 32 represented various native and commercial interests. The Council had full powers of legislation for British India, but could not override an Act of the British Parliament. The Governor-General had and still has a discretionary power, similar to that of colonial Governors, of assenting to legislation; and like them he may reserve a bill for the assent of the Crown, in which case it only becomes law if the assent of the latter was given. He may in cases of emergency make Ordinances for the peace and good government of any part of British India to last for six months. For certain districts which are not so advanced as others he also has the power of making Regulations in Council.

The Act of 1919 instituted great changes in the organisation and working of the Legislature. It now consists of two chambers The Council of State, or Upper House, comprises not more than 60 members, of whom not more than one-third can be official members. The Legislative Assembly, or Lower House, contains 144 members, of whom 103 are elected and the rest nominated; ot the latter not less than 26 can be officials. The numbers may be varied by rules subsequent to the Act, provided that

at least five-sevenths of the Legislative Assembly shall be elected and at least one-third of the rest officials. The Council of State sits for five years, and the Lower House for three, although the Governor-General may dissolve them or may extend their existence in special circumstances. Within six months of the dissolution of a chamber, another must meet. Every member of the Executive Council must be nominated as a member of one of the chambers. The Legislative Assembly is presided over by a President appointed by the Governor-General.

The Legislature has power, subject to certain limitations, to make laws for all persons within British India, for all British subjects within the Native States, and for all native Indian subjects of the King in any part of the world. The assent of both chambers is necessary for the passing of a bill, and differences of opinion are to be settled by joint sessions. The Governor-General, however, may certify that a bill is essential and the bill shall thereupon become law even without the assent of both chambers; but when the Governor-General enacts laws in this way copies of the proposed measure must first be laid before the British Parliament and the consent of the King obtained. The Governor-General retains his power of making Ordinances and the Governor-General in Council his power of making Regulations; while the Governor-General and Crown of course retain their powers of assent, reservation or disallowance of legislation.

§ 216. **Provincial Governments.**—The Act of 1919 contained elaborate provisions for further decentralisation and for the development of the organisation and powers of the Provincial Governments. The provisions hinge on the distinction between the different functions of administration. They are classified as Central or Provincial subjects; the latter have been handed over to the Provincial Govern-

ments, subject to the general control of the Government of India, while for the sake of convenience certain Central subjects, such as the collection of income tax, may be dealt with by the Provincial Governments as the agents of the Central Government. Further, a distinction is drawn in regard to Provincial subjects between "transferred" and "reserved" subjects. The Governor-General in Council retains unaltered powers of control over the Provincial Governments in their administration of "reserved" subjects, but in regard to "transferred" subjects only interferes in cases where intervention is necessary to safeguard Central subjects, or to decide matters in which two or more provinces are concerned, or to secure the due exercise of its powers and performance of its duties by the Central Government, or in regard to the raising of loans by local Governments, or under rules laid down by the Secretary of State in Council. The list of "transferred" subjects includes local self-government, public health and sanitation, education, public works, agriculture, fisheries, excise, registration, development of industries, weights and measures, adulteration, and religious and charitable endowments. Certain sources of revenue are allocated to the Provincial Governments, and these are obliged to make certain annual contributions to the Central Government, which are made the first charge on their revenue.

The Presidencies of Bengal, Madras and Bombay, and the Provinces known as the United Provinces, Punjab, Behar and Orissa, the Central Provinces, and Assam, are each to be governed in relation to "reserved" subjects by the Governor-in-Council, and in relation to "transferred" subjects by the Governor acting with Ministers. Thus the new Provincial Governments are formed on a plan of "diarchy," or dualised form of government, by which certain functions are discharged by one body—the Gover-

nor-in-Council—and the other functions by another body—the Governor acting with Ministers. Each body is responsible for its own share in the work of administration, while the Governor acts as a connecting and co-ordinating influence.

The Governor's Executive Council, in which he deals with "reserved" subjects, consists of not more than four members. The Ministers, through whom the Governor acts in regard to "transferred" subjects, must be elected members of the local Legislature, and must not be either members of the Executive Council or other officials. The Governor may also appoint from among the non-official members of the Legislature a limited number of secretaries to assist members of the Executive Council and Ministers, *i.e.* as in the case of the Central Government to act virtually as parliamentary under-secretaries. In "transferred" subjects the Governor is guided by the advice of his Ministers, unless he sees sufficient cause to dissent from their opinion. Thus a certain degree of responsible government is secured, which may be extended at will.

The Governor's Legislative Council consists of members of the Executive Council and other members, nominated or elected. The numbers vary in the different provinces, but not more than one-fifth are to be official members, and at least seven-tenths must be elected and non-official. The Legislative Council sits for three years, unless dissolved by the Governor, who may extend the period to four years if he thinks fit; a new Council must meet within six months of the dissolution of the last.

The provincial Legislatures are empowered to legislate for the "peace and good government" of their provinces, and may repeal existing laws, with certain limitations which in the main concern Central or "reserved" subjects. The provincial budget, on the recommendation of the

Governor, is laid before the Legislative Council each year. The Council may refuse assent to a proposed grant or may reduce the amount, provided (1) that the demand does not relate to "reserved" subjects, (2) that the Governor shall have power in an emergency to authorise expenditure which he certifies to be necessary for the safety or order of the province, and (3) that no proposals shall be submitted to the Council in regard to contributions to the Central Government, interest or sinking fund charges on loans, expenditure prescribed by law, or salaries of persons appointed by the British Government. Legislation may be vetoed by the Governor, returned for reconsideration or reserved for the consideration of the Governor-General, who in turn may reserve it for the consideration of the Crown. When a Legislature refuses to pass legislation on a "reserved" subject, the Governor may certify that the bill is essential, and it thereby acquires force of a provincial law, subject to the approval of the Governor-General. The Governor may address the Council.

In addition to these provinces there are other areas of provincial administration in India which do not come within the scope of the Act. Burma constitutes a Lieutenant-Governorship, and at the moment (June 1922) a bill is before Parliament for extending the provincial system set up by the Act of 1919 to Burma. The North-West Frontier Province, Ajmer-Merwara, Coorg, and Baluchistan are governed by Chief Commissioners. The Andaman and Nicobar Islands are governed from India through a Chief Commissioner.

§ 217. **Local Government.**—Within the Provinces the administrative unit is the district; usually three or more districts are grouped together to form a division under a Commissioner. At the head of each district is an executive officer, who is called in some districts a Collector and

Magistrate, in others a Deputy-Commissioner; this officer has entire control of the district, subject to the control of his official superior. The districts are partitioned out into smaller areas for convenience of administration.

During the past forty years an extensive system of local self-government by municipalities and local boards has grown up. There is a large number of municipalities, with considerable powers of local control. The municipal committees can impose taxes, enact bye-laws, carry out improvements, and spend money, subject to control from above. By the Local Self-Government Acts of 1883-4 the elective principle was extended, to a greater or less degree, all over India. In all the larger towns, and in many smaller ones, most of the local committee members are elected by the ratepayers; and everywhere the majority of these committees consists of natives. For rural areas local boards, also mainly elective, have been established.

§ 218. **Indian Service.**—The chief of the Indian services is technically styled the Indian Civil Service. It is limited to something over a thousand members, who are chosen by open competition in England. Nearly all the higher posts are reserved by statute for this service, and the great majority are filled by Europeans. Some of the other services are mainly recruited in England, but by far the greater number of posts other than these are held by natives.

The Act of 1919 contains a number of provisions in regard to the Indian Civil Service. The Secretary of State in Council is empowered to make regulations for classification, methods of recruitment, conditions of service, etc., and may in respect of certain prescribed matters delegate the power of making similar regulations to the Governor-General in Council or to provincial Governors, or may authorise the Indian Legislature or provincial Legislative

Councils to make laws regulating the public services. A Public Service Commission is to be established in India, to consist of not more than five members, appointed by the Secretary in Council for a term of five years, which is to exercise such control over the public services in India as is delegated to them by the Secretary in Council.

§ 219. **The Native States** comprise the "territories of any native prince or chief under the suzerainty of His Majesty, exercised through the Governor-General in Council or through" some officer subordinate to him. They are not technically British territory, but as the external relations of all of them are controlled by Great Britain, and as other nations hold her responsible for the maintenance of order and the protection of foreigners within their borders, they should be considered as part of the British possessions. The total number of Indian States is nearly 700, but many of them are very small indeed. Their rulers all acknowledge the supremacy of the British Government, and owe to it loyalty and allegiance. They have no right to make war or peace, or to enter into negotiations or alliances with each other or with external states; nor are they allowed to maintain armies above a certain specified limit. The degree of internal control varies greatly, and is usually exercised by a British Resident appointed by the British Government, whose advice the ruler must accept. In some States practically the whole administration has been taken over; but the more important princes are practically autonomous in their own territory. The position depends on some treaty or engagement with the native prince, or simply upon usage. The British Government, however, reserves the right to interfere in case of misgovernment. In addition to these internal states, which have a fixed status, there are several frontier regions, whose status varies or is not strictly defined;

over these the Government of India exercises some degree or other of control.

During recent years the rulers of the native States have met in conference at the invitation of the Viceroy. In 1921, in accordance with the terms of the 1919 Act, a Council of Princes was established, to serve as a permanent consultative body to discuss matters in regard to treaties or affairs of Imperial or common concern.

§ 220. **The Indian Defence System.**—The military forces consist of the British Regular Forces, the Native Army, the Volunteers, and the Imperial Service Troops. They are governed by the headquarters staff and the Army Department, both of which are under the supreme control of the Commander-in-Chief, who sits in the Viceroy's Council. The forces are recruited by voluntary enlistment. The Indian Territorial Force is intended to form a second line of defence to the Regular Army in India; it is not liable to service overseas and it has a separate staff.

The Imperial Service Troops are raised and maintained by Native States; they are officered by the States which support them, though trained under the supervision of British officers.

§ 221. **The New Status of India.**—The purpose of the reforms established by the Act of 1919 was stated in the Act itself to be the preparation of India to take its place as one of a league of self-governing communities; and already the new status of India has been recognised in various ways. In 1907 it was definitely decided that India should not be represented in the Imperial Conference, but the part played by India in the War made the exclusion unjustifiable, and India is now a regular member of the Conference. Moreover a representative of India signed the treaty of peace with Germany, and India is a member of the League of Nations.

The Act of 1919, though avowedly a great step in the direction of responsible government, was an experimental, a tentative, measure. It was provided by the Act that at the end of ten years the Secretary of State, with the concurrence of both Houses of Parliament, should submit to the King the names of persons appointed to act as commissioners for enquiring into the working of the system of government, the growth of education and the development of responsible institutions in India. On the basis of this enquiry a report should be made as to the desirability of extending, modifying, or restricting the degree of responsible government in existence. It was expressly laid down that the report should include a recommendation as to whether the establishment of Second Chambers in the provincial Legislatures was or was not desirable.

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CHAPTER XX.

DEVELOPMENT OF STATE ACTIVITIES.

§ 222. Prior to the middle of the nineteenth century State activities appear to have been directed mainly to the preservation of order and to the raising of revenue as circumstances demanded. Since then, however, a development in the extension of the principle of State interference has become increasingly manifest. This development received a great impetus during the recent war, and, although many of the functions then appropriated by the State have lapsed with the passing of the emergency, many others seem destined to be permanent. As both present arrangements and possible future extensions are necessarily matters of acute controversy, all that can be attempted in this chapter is to indicate some of the more important legislative enactments of recent date in which this development is apparent.

§ 223. **Acts Relating to Children.**—Important measures have been passed with the object of safeguarding the health and physique of school children. By the Education (Provision of Meals) Act, 1906, Local Education Authorities are empowered to assist voluntary efforts for feeding underfed school children. The Education (Administra-

tive Provisions) Act, 1907, imposed upon Local Education Authorities the duty of providing for the medical inspection of children in elementary schools.

By this Act Education Authorities are required to appoint a School Medical Officer, whose duty it is to examine the physical and mental condition of every child attending a public elementary school twice at least during his school course and to advise the Education Authority on the hygienic condition of the schools under its control. The provision of medical inspection has now by the Education Act of 1918 been extended to secondary, continuation and other schools under the control of local authorities.

In 1908 was enacted what has been termed the "Children's Charter." It is a measure intended to deal in a comprehensive manner with the protection of child life and health, but it is also concerned with the treatment of the juvenile offender. The various provisions of the Act deal with different forms of cruelty and neglect of children, with juvenile smoking, with allowing children to enter public-houses and the giving of intoxicants to children except under medical advice. The Act further provides for special courts and places of detention for juveniles under trial, whilst a children's magistrate is appointed in London.

Other Acts relating to children are the Employment of Children Act (1904), which prohibits street trading by children under the age of eleven, and gives power to local authorities to make by-laws regulating such trading up to the age of sixteen; and the Children (Employment Abroad) Act, 1913, which prevents children being taken out of the United Kingdom for the sake of performing in public for profit. Further regulations as to child employment are embodied in the Education Act of 1918.

§ 224. **Old Age Pensions Acts.**—With a view to dealing with the relief of the aged poor who are no longer able to

maintain themselves, the Old Age Pensions Acts were passed in 1908 and 1911. By the terms of these Acts, persons over 70 years of age and of British nationality are entitled to receive weekly financial assistance from the State. The amount of this assistance at first varied from 1s. to 5s. a week according to the amount of the private means that the pensioner possessed, but owing to the great decrease in the value of money caused by the Great War the rate is now fixed at from 1s. to 10s. As a general rule this pension is paid through the Post Office. The administration of Old Age Pensions is under the control of the Ministry of Health.

§ 225. **National Insurance Act.**—The National Insurance Act, 1911, came into operation in January 1913, and has since been amended mainly in the direction of simplification by the National Health Insurance Act, 1918. In general terms it may be said that this Act affects all manual workers and all other employed persons with the exception of those whose salary is at a higher rate than £160 a year, or who are able to show that their employers have established a fund by which provision is made for benefits similar to those provided by the National Insurance Act. The benefits under the Act include medical benefit, sanatorium benefit, maternity benefit, and certain additional benefits. In order to secure these benefits, weekly contributions are made by the workers and the employers, supplemented by grants from the Imperial Exchequer. A central body of Commissioners was at first created to undertake the general administration of the Act. It is now administered by the Ministry of Health in England and Wales and by corresponding Departments in Scotland and Ireland. For detailed work each county and county borough appoints an Insurance Committee, representative of the various interests affected by the Act, and including

representatives of the medical officers and of the Ministry of Health.

The second part of the Insurance Act provided for insurance against unemployment in certain specified trades; by the Unemployment Insurance Acts of 1920 and 1921 practically all persons covered by the Health Insurance scheme are compulsorily insured against unemployment, except out-workers, and persons employed in agriculture and private domestic service. Separate industries may, with the approval of the Ministry of Labour, contract out of this scheme by setting up suitable schemes of their own. The funds to provide the unemployment benefits are derived from the workers, the employers, and the State. The Acts prescribe the conditions under which the benefits are to be available, and provide for arbitration in case of dispute. The Unemployment Insurance scheme is administered by the Ministry of Labour through the Employment Exchanges, Trade Unions and Friendly Societies.

§ 226. **The Labour Exchanges Act** of 1907 was intended to assist both employers and workers by supplying information to workers with regard to places in which their services are required. Labour Exchange Offices have been established in every important centre of population, whilst sub-offices have been set up in other districts. A joint advisory committee is established in every principal centre, on which representatives of workmen and employers meet in equal numbers, under the chairmanship of an impartial permanent official. In 1916 the name Labour Exchange was altered to that of "Employment Exchange." In 1917 the Exchanges came under the control of the newly constituted Ministry of Labour.

§ 227. **Mental Deficiency Act, 1913.**—By the terms of this Act a Central Authority was established to deal with

mentally infirm people who are not otherwise cared for or who, for some reason or other, may be considered to be a danger to the community. County Councils and County Boroughs are required to form special committees to deal with this problem. Local Education Authorities are called upon to ascertain what children in their area are defectives. In those areas in which the Defective and Epileptic Children's Act, 1899, has been adopted the educatable feeble-minded children are to be sent to special schools. The powers and duties of the Local Education Authorities have been further extended by the Education Act of 1918 (see Ch. XVII.).

§ 228. **Maternity and Child Welfare.**—Recent years have seen a marked and growing interest in the preservation of infant life. Among enactments passed during late years which bear on the question is the Notification of Births (Extension) Act, 1915, which made notification compulsory and empowered the Local Government Board to defray half the cost of approved schemes for the care of expectant and nursing mothers and young children. The Maternity and Child Welfare Act of 1918 extended the functions of Sanitary Authorities, and gave the Local Government Board—now the Ministry of Health—power to aid schemes for the promotion of the midwifery service, for providing maternity hospital treatment, for improving the health of nursing mothers and young children by sending them to convalescent homes, for dealing with the physical welfare of children under five in need of hospital treatment, and for securing satisfactory conditions of home or institution life. In 1914 the Board of Education was empowered to make grants in aid of day nurseries and welfare centres, and the Education Act of 1918 permitted the Board to pay grants to education authorities or local bodies responsible for approved nursery schools. The

Ministry of Health has now taken over the duties of the Board of Education in this respect.

§ 229. **Housing and Town Planning.**—As far back as 1890 the Central Government placed upon the Local Authorities the duty of inspecting and condemning unfit dwellings. Owing to the fact that no adequate provision was made to ensure the proper performance of this task, the authorities concerned failed in many cases to discharge their duty. To remedy this the Housing and Town Planning Act was passed in 1909. Its main provisions were: (1) Urban or Rural areas were empowered to build new cottages and houses; (2) Local Authorities were given power to purchase land compulsorily; (3) loans might be obtained to facilitate housing schemes; (4) Local Authorities would be compelled, if necessary, to exercise the powers they possessed under the Act; (5) the Local Government Board might authorise the preparation of a town planning scheme for a particular neighbourhood.

The cessation of house-building activity during the war led to a serious shortage of accommodation and the Housing and Town Planning Act of 1919 was passed to deal with the situation. Previously local authorities had power to provide new houses, but generally speaking there was no compulsion for them to do so; but under the new Act every housing authority was required to ascertain how many houses were needed within its area, and to provide them so far as they would not be supplied by other means. In default of action by Local Authorities the Ministry was authorised either to empower the County Council to act or itself to prepare schemes. Financial assistance would be given by the Government to local authorities when the cost of the schemes was in excess of a penny rate, and to Public Utility Societies which build houses for the working classes. This Act did not prove effective, and the

housing problem remains extremely serious. Another Act was passed in 1923, but the whole question is again under consideration (1924), and the present Labour Government proposes drastic treatment on a large scale.

§ 230. **Development and Road Improvement Funds Acts, 1909 and 1910.**—These Acts were intended for the purpose of promoting the economic development of the United Kingdom and for the improvement of roads. In order to carry out the first part of these measures, eight Commissioners with the assistance of a staff of paid officials are appointed to constitute a Central Authority. The Treasury is authorised to make certain grants and loans to the Development Commissioners for certain prescribed purposes, the chief of which are aiding and developing agriculture, forestry, reclamation and drainage of lands, general improvement of rural transport, and the development of fisheries.

To deal with the second part of the Act, a Road Board consisting of five members assisted by a paid staff was constituted. The Board was given the power of constructing new roads and of making grants to the existing Highway Authorities, who undertake to effect such improvements in the roads as will facilitate motor traffic. The Board is now incorporated in the Ministry of Transport, as the Roads Department.

§ 231. **Industrial Councils.**—An interesting and highly important development of public life, if not strictly included under the term of State activities, is the institution of Industrial Councils to settle disputes between employers and employed on an amicable and reasoned basis, without resort to the disastrous weapon of a strike. This development is due to the labours of the Committee on Relations between Employers and Employed presided over by the Deputy Speaker, Mr. Whitley—hence the name of "Whitley" Councils frequently given to these bodies.

According to the recommendations embodied in the valuable reports of this committee, National Joint Industrial Councils, District Councils and Works Committees have been set up in many of the more important industries and have already done a large amount of useful work. The recommendations of the committee have also been applied to the administrative departments of the Civil Service. The Ministry of Labour has established a special Department to give assistance and information where it may be desired, and to collect and codify the results of the activities and experience of Joint Industrial Councils.

The work already accomplished by these Joint Councils includes (1) agreements in many industries on questions of wages and hours; (2) setting up of machinery for undertaking conciliation duties; (3) appointment of committees to deal with education and training of apprentices; (4) formation in some industries of Welfare, and Statistical and Research Committees; (5) action taken by several councils to improve the organisation of both employers and workpeople.

APPENDIX I.

THE BRITISH ELECTORAL SYSTEM.

The general elections of November 1922 and November 1923 have brought to the fore the question of amending our existing electoral system.

Under the old two-party conditions the practice of holding a single poll worked, on the whole, fairly well. There were normally two candidates for each single-member constituency, and the relative strength of parties in the House of Commons was roughly proportional—though at times rather inadequately so—to the number of total votes given by their supporters. In other words, the party with a majority in the House had obtained a majority, though probably not in quite the same proportions, of the total votes recorded.

The rise of the Labour Party, involving, temporarily at least, a three-party system, has produced a very different state of affairs. Many constituencies returning a single member have produced three or more candidates for election. Under such conditions a member may be, and often is, returned who has obtained only a minority of the total votes polled, the majority of votes being divided among his opponents. Thus *A* may poll 10,000 votes, *B* 8,000 votes, and *C* 6,000 votes. *A* is returned as member for the constituency though he has obtained only 10,000 votes in a total poll of 24,000.

In an election conducted under such conditions a party may obtain a majority in the House of Commons, though its candidates have obtained only a minority of the total votes polled. The Conservative Party was placed in such a position as a result of the 1922 election. In the election of the following year, by contrast, though the total number of votes given to each of the three parties did not greatly change from that of the preceding election, the numerical position of parties in the House was radically altered and gave no party a majority.

In view of these facts many people advocate some form of proportional representation or second ballot; such forms have for some time been in use in many continental countries where there are several political parties or groups. The introduction of these practices would probably necessitate a wholesale re-arrangement of constituencies, and might transform our entire parliamentary system. Whether such a change is probable and what might be its effects are matters which do not call for discussion here. It may be remarked, however, that proposals of this nature meet with strong opposition on the ground that the change would be alien to our political traditions, and that the purpose of our electoral system is not to reflect faithfully in the House of Commons every shade of opinion, but to secure a stable majority with which to "carry on the King's Government."

APPENDIX II.

THE CONSTITUTION OF THE IRISH FREE STATE.

Since the publication of the fifth edition of *The Government of Great Britain* the situation in Ireland has clarified somewhat, and a constitution has been drawn up and put into working in the Free State. Although this State no longer forms part of what is now called the United Kingdom of Great Britain and Northern Ireland, it is still included within the territories forming the British Empire, though with a peculiar position of its own, and it has been thought well to add to the present edition a brief summary of its new constitution, omitting, of course, controversial matters, and without attempting any estimate of the actual political situation.

§ 1. **The Establishment of the Free State.**—The Government of Ireland Act of 1920 provided for separate Parliaments and Executives for "Northern Ireland" and "Southern Ireland" (see p. 130). Under this Act the present Ulster administration was brought into being, but the rest of Ireland refused to accept the system thus provided for it. The Irish Free State (Saorstát Eireann), comprising 26 of the 32 counties of Ireland, came into being as a result of the Treaty signed in December 1921

between the British Government and a Sinn Fein delegation. This Treaty was to be submitted for the approval of the British Parliament and of a specially summoned meeting of Members of the Parliament of Southern Ireland, elected under the Government of Ireland Act of 1920, and then ratified by the legislation necessary to carry it into effect. Approval was secured, and the Treaty was embodied in the Irish Free State (Agreement) Act, 1922.

Under the terms of the Treaty a Provisional Government was constituted in January 1922, with authority to discharge the functions of government for a period not exceeding twelve months. This Government drafted a Constitution, subsequently amended after negotiations with the Imperial Government, and in September the Provincial Parliament sat as a Constituent Assembly for the purpose of passing the Constitution. This Assembly passed the Constitution in its final form, and it was formally enacted by the Imperial Parliament and promulgated by Royal Proclamation in December 1922.

§ 2. **The Status of the Free State.**—The position of the new State within the Empire was defined by the Treaty of December 1921. According to this Treaty the Irish Free State is to have the same constitutional status "in the community of nations known as the British Empire" as the self-governing Dominions (see Chapter XVIII). Its position in relation to the Imperial Parliament and Government was more precisely defined as being that of the Dominion of Canada, and the representative of the Crown in the Free State was to be appointed in like manner as the Governor-General of Canada. Various clauses dealt with the responsibility for defence of the coasts to be undertaken by the Irish and English Governments respectively and provided for the affording of harbour and other facilities to the Imperial forces in time

of peace or war by the Free State Government, and also for the limitation of the defence forces to be maintained by the Free State.

A clause of the Treaty which has since given rise to violent controversy provided that in certain circumstances a Commission should be set up to determine, "in accordance with the wishes of the inhabitants, so far as may be compatible with economic and geographical conditions," the permanent boundary between the Free State and Northern Ireland (Ulster).

§ 3. **The Fundamental Rights.**—The first section of the Constitution contains a declaration of certain "fundamental rights," things unknown in our own constitution. The Irish Free State is declared to be a co-equal member of the community of nations forming the British Commonwealth, and it is laid down that "all powers of Government, and all authority, legislative, executive, and judicial in Ireland, are derived from the people of Ireland." Citizenship is conferred upon all persons born in Ireland or of Irish parentage or domiciled within the area of the Free State for at least seven years before the establishment of the Constitution, and men and women are accorded equal rights as citizens. The Irish language is to be the national language, but English is equally recognised as an official language. Liberty of the person and the dwelling of each citizen are declared inviolable. Freedom of conscience and of the profession and practice of religion are guaranteed, and any law establishing, endowing or prohibiting a form of religion is declared unconstitutional. Freedom of speech and the right of lawful assembly and association are also guaranteed. Free elementary education is accorded to every citizen.

§ 4. **The Legislature** (the Oireachtas) consists of the King, a Chamber of Deputies (Dáil Eireann), and a

Senate (Seanad Eireann). Members are required to take an oath of allegiance to the Constitution and of fidelity to the King. All citizens of 21 years and over complying with the existing electoral laws are entitled to vote for members of the Dáil, and all those over 30 years of age to vote for members of the Seanad. No citizen has more than one vote for either assembly, and voting is by secret ballot.

Every citizen of 21 years of age, unless otherwise disqualified, is eligible for election to the Dáil. Elections are conducted under a system of Proportional Representation (see Appendix I.). The number of Deputies is based upon population; there must not be less than one member for each 30,000 of the population and not more than one member for each 20,000, while the universities each return three Deputies. At present the number of Deputies is 153. The maximum duration of the Dáil is fixed at four years, but it may be dissolved before that period expires.

The Senate consists of 60 members, including two from each of the two universities. Its members must be over 35 years of age and eligible for election to the Dáil, and must be citizens who "have done honour to the nation by reason of useful public service" or who represent important aspects of the national life. The normal term of membership is to be twelve years. One-fourth of the members are to be elected under a system of Proportional Representation every three years from a panel drawn up by the two Houses. The first Senate set up under the Constitution, however, consists of 30 members chosen by the Dáil and 30 nominated by the President of the Executive Council. No citizen may be a member of both Houses. Members receive payment for their services.

The Constitution formally lays down that there must be at least one session of Oireachtas each year. The Dáil

alone has legislative authority in regard to money bills, though the Senate may make financial recommendations. All other bills require the assent of both Houses, but this is modified by a provision which recalls the Parliament Act of 1911 (see pp. 59-60). If the Senate does not pass a bill within 270 days, or a longer period previously agreed upon, after it has first been sent up from the Dáil, the bill shall be deemed to have passed both Houses in the form in which it was last passed by the Dáil. If the Senate requests it, a joint sitting of the two Houses may be held to debate a bill, but no vote can be taken at such a sitting.

The representative of the Crown has the right to refuse the royal assent to any bill or to reserve it for consideration; but in regard to such matters the law, practice and customary usage governing such cases in the Dominion of Canada must be followed (see pp. 204-207).

§ 5. **Referendum and Initiative.**[1]—The Constitution provides for a "Referendum" of the people, when demanded by a certain proportion of members of either House, in regard to any bill which is not a money bill or a measure necessary for the immediate preservation of the public peace, health or safety. Provision is also made for the "Initative"; proposals for laws or constitutional amendments may be initated on the petition of 50,000 registered voters.

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[1] These two political devices have been adopted in modern times by many countries in Europe, America and some of our own colonies. The Referendum involves the submission, in certain circumstances, of a measure proposed by the Legislature to the body of electors for ratification or rejection. The Initiative requires that when a certain number of the citizens demand that a particular measure shall be brought forward, a bill to this effect must be introduced in the Legislature.

All proposed amendments of the Constitution, after the first eight years of its establishment, must be submitted to a Referendum before they can become law.

§ 6. **The Executive.**—The Constitution vests the executive authority in the King and at the same time provides that it shall be exercised in accordance with the law, practice, and constitutional usage governing its exercise in the case of the Dominion of Canada, by the representative of the Crown, the Governor-General of the Irish Free State.

As in the self-governing Dominions (see pp. 220-222), this executive authority is exercised by the Governor-General on the advice of an executive council responsible to the legislature and composed of the leaders of the party in power in the Lower House. The Irish Executive Council (Aireacht) may, according to the Constitution, consist of not more than seven or less than five Ministers of State. They must be members of the Dáil, the popular assembly, and are responsible to it. The Executive Council must always include the President and Vice-President of the Council and the Minister for Finance. The President, the acting head of the executive, is nominated by the Dáil. He himself nominates the Vice-President and other members of the Council, but the latter nominations must be approved by the Dáil. Other Ministers, besides the members of the Council, may be nominated by the Dáil (as we have Ministers who are not of Cabinet rank), and these are responsible to the Dáil alone; but the total number of Ministers, including those in the Council, must not exceed twelve. As we have seen, the members of the Council must also be members of the Dáil. Unless otherwise determined, the other Ministers must not have seats in the Dáil during their term of office, and if they hold seats at the time of their appointment to

office must vacate them, but the Dáil may from time to time, on the motion of the President of the Executive Council, decide that a particular Minister may have a seat in the assembly, provided that the total number of Ministers who are members of the Dáil does not exceed seven. Every Minister may speak in the Senate.

The normal channel of communication between the Irish and Imperial Governments is the Colonial Office; and, like the Dominions, the Irish Free State maintains a High Commissioner in London (see p. 215).

§ 7. **The Judiciary.**—The Constitution provided for the establishment of a national judiciary, but left the permanent system to be worked out later in detail. According to the Constitution there were to be established courts of local and limited jurisdiction, with a right of appeal from them to be determined by law, a High Court, invested with full original jurisdiction in all matters, civil or criminal, and a Supreme Court of Appeal, with appellate jurisdiction from decisions of the High Court. It should be noted that, although the decision of the Supreme Court was declared to be in all cases final and incapable of being reviewed by any other court or authority, it was expressly stated that nothing in the Constitution should impair the right of any person to petition the King for special leave to appeal from the Supreme Court to the King in Council (*i.e.* to the Judicial Committee of the Privy Council) or the right of the King to grant such leave.

§ 8. **Defence**—The Constitution explicitly states that, except in the case of actual invasion of its territory, the Free State is not to be committed to active participation in any war without the assent of the Oireachtas. It also declares that the Oireachtas has the exclusive right to regulate the raising and maintenance of such armed forces as are allowed by the Treaty with Great Britain, and that

all such forces shall be subject to the control of the Legislature. Subsequently the Defence Forces (Temporary Provisions) Act, 1923, authorised the raising and maintenance of Defence Forces, the number of which should be from time to time determined by the Oireachtas. The Command-in-chief and all executive and administrative powers in respect of these forces are vested in the Executive Council, and exercised through a Minister for Defence, who has a Defence Council to advise him in all matters relating to Defence.

§ 9. **International Relations.**—The Free State has been admitted to membership of the League of Nations, of which the other British Dominions were original members (see p. 213). It has also, like Canada, made formal application for the appointment of an ambassador at Washington, an innovation to which the United States government seems less inclined than that of Great Britain to agree.

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